2021

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2021

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2021 REGULAR SESSION

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 11

Title 41

(As Revised 2018)

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By the Editorial Staff of the Publisher

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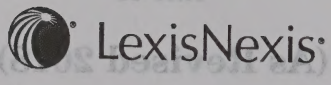

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2021 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 41. Public Health

CHAPTER 21. Individuals with Mental Illness or an Intellectual Disability

PERSONS IN NEED OF MENTAL TREATMENT

SEC.

41-21-104. Continuing jurisdiction of court over person committed to inpatient or outpatient treatment for one year after treatment completed; recommitment.

HUDSON'S LAW; PROVISION OF CHROMOSOMAL DISORDERS EDUCATIONAL INFORMATION

41-21-251. Title.

41-21-253. Legislative findings; "chromosomal disorder" defined; prenatal care, postnatal care and genetic counseling providers required to provide certain information about chromosomal disorders to expectant or new parents.

CHAPTER 31. Commitment of Alcoholics and Drug Addicts for Treatment

41-31-18. Continuing jurisdiction of court over person committed to inpatient or outpatient treatment for one year after treatment completed; recommitment.

CHAPTER 41. Surgical or Medical Procedures; Consents

PERFORMANCE OF ABORTION; CONSENT

41-41-34.1. Performance of abortion of unborn human individual with a detectable heartbeat prohibited; exceptions.

CHAPTER 43. Cemeteries and Burial Grounds

CEMETERY LAW

41-43-59. Cemetery owners authorized to disinter human remains for reinterment or transportation from cemetery under certain circumstances; immunity for claims arising from disinterment and reinterment.

CHAPTER 61. State Medical Examiner

MISSISSIPPI MEDICAL EXAMINER ACT OF 1986

41-61-66. Christian's Law; confidentiality of autopsy media records held by medical examiner; exceptions; penalties for violation.

CHAPTER 111. Child Death Review Panel

41-111-3. Mandatory reporting of child fatality or near fatality; mandatory reporters; reporting procedure and contents; confidentiality of reports; reporter immunity; penalties.

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TITLE 41.

PUBLIC HEALTH

CHAPTER 3.

STATE BOARD OF HEALTH; LOCAL HEALTH BOARDS AND OFFICERS

IN GENERAL

Sec.

41-3-15.1. Mississippi Center for Rural Health Innovation established; purpose; definition of "rural hospital"; areas of service provided; department to provide personnel and resources; department authorized to enter into contracts.

41-3-20. Repeal of Sections 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19.

§ 41-3-1.1. Reconstitution of State Board of Health; qualifications, appointment, and terms of members; statement of economic interest; recusal from participation in certain matters [Repealed effective July 1, 2024].

HISTORY: Laws, 2007, ch. 514, § 2; reenacted without change, Laws, 2010, ch. 505, § 1; reenacted without change, Laws, 2014, ch. 352, § 1; reenacted without change, Laws, 2017, ch. 374, § 1, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 399, § 1, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was reenacted without change by Laws of 2021, ch. 399, § 1. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2021 amendment, effective March 25, 2021, reenacted the section without change.

§ 41-3-3. Oath of members [Repealed effective July 1, 2024].

HISTORY: Codes, 1892, § 2268; 1906, § 2483; Hemingway's 1917, § 4832; 1930, § 4869; 1942, § 7025; Laws, 1924, ch. 313; reenacted without change, Laws, 1982, ch. 494, § 2; reenacted, Laws, 1990, ch. 568, § 2; reenacted without change, Laws, 1994, ch. 462, § 2; reenacted, Laws, 1995, ch. 363, § 2; reenacted without change, Laws, 2001, ch. 420, § 2; reenacted without change, Laws, 2007, ch. 514, § 3; reenacted without change, Laws, 2010, ch. 505, § 2; reenacted without change, Laws, 2014, ch. 352, § 2; reenacted without change, Laws, 2017, ch. 374, § 2, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 399, § 2, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was reenacted without change by Laws of 2021, ch. 399, § 2. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2021 amendment, effective March 25, 2021, reenacted the section without change.

§ 41-3-4. Chairman and vice-chairman; meetings; automatic termination of members' terms of office for nonattendance; compensation [Repealed effective July 1, 2024].

HISTORY: Laws, 1980, ch. 465, § 2; Laws, 1980, ch. 560, § 31; reenacted without change, Laws, 1982, ch. 494, § 3; reenacted, Laws, 1990, ch. 568, § 3; reenacted without change, Laws, 1994, ch. 462, § 3; reenacted, Laws, 1995, ch. 363, § 3; reenacted without change, Laws, 2001, ch. 420, § 3; reenacted and amended, Laws, 2007, ch. 514, § 4; reenacted without change, Laws, 2010, ch. 505, § 3; reenacted without change, Laws, 2014, ch. 352, § 3; reenacted without change, Laws, 2017, ch. 374, § 3, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 399, § 3, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was reenacted without change by Laws of 2021, ch. 399, § 3. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2021 amendment, effective March 25, 2021, reenacted the section without change.

§ 41-3-5.1. Executive officer; qualifications; term of office; removal [Repealed effective July 1, 2024].

HISTORY: Laws, 2007, ch. 514, § 5; reenacted without change, Laws, 2010, ch. 505, § 4; reenacted without change, Laws, 2014, ch. 352, § 4; reenacted without change, Laws, 2017, ch. 374, § 4, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 399, § 4, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was reenacted without change by Laws of 2021, ch. 399, § 4. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2021 amendment, effective March 25, 2021, reenacted the section without change.

§ 41-3-6. State Board of Health to review existing legislation pertaining to public health and to submit new legislation [Repealed effective July 1, 2024].

HISTORY: Laws, 1980, ch. 465, § 4; reenacted without change, 1982, ch. 494, § 5; reenacted, Laws, 1990, ch. 568, § 5; reenacted without change, Laws, 1994, ch. 462, § 5; reenacted, Laws, 1995, ch. 363, § 5; reenacted without change, Laws, 2001, ch. 420, § 5; reenacted without change, Laws, 2007, ch. 514, § 6; reenacted without change, Laws, 2010, ch. 505, § 5; reenacted without change, Laws, 2014, ch. 352, § 5; reenacted without change, Laws, 2017, ch. 374, § 5, eff

from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 399, § 5, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was reenacted without change by Laws of 2021, ch. 399, § 5. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2021 amendment, effective March 25, 2021, reenacted the section without change.

§ 41-3-15. General powers, duties and authority of State Board of Health; certain specific powers of State Department of Health; general powers and duties of executive director; establishment of office of rural health [Repealed effective July 1, 2024].

HISTORY: Codes, 1892, § 2271; 1906, § 2487; Hemingway's 1917, § 4836; 1930, § 4873; 1942, § 7029; Laws, 1968, ch. 441, § 2; Laws, 1971, ch. 378, § 1; reenacted and amended, Laws, 1982, ch. 494, § 6; Laws, 1983, ch. 522, § 1; Laws, 1986, ch. 371, § 1; Laws, 1986, ch. 500, § 22; Laws, 1987, ch. 512, § 5; Laws, 1988, ch. 395, § 4; Laws, 1988, ch. 573; reenacted and amended, Laws, 1990, ch. 568, § 6; Laws, 1992, ch. 495, § 1; reenacted and amended, Laws, 1994, ch. 462, § 6; reenacted and amended, Laws, 1995, ch. 363, § 6; Laws, 1995, ch. 521, § 21; Laws, 1997, ch. 523, § 2; Laws, 1998, ch. 332, § 1; reenacted without change, Laws, 2001, ch. 420, § 6; Laws, 2002, ch. 506, § 8; Laws, 2006, ch. 489, § 1; Laws, 2007, ch. 342, § 1; reenacted and amended, Laws, 2007, ch. 514, § 7; reenacted and amended, Laws, 2010, ch. 505, § 6; reenacted and amended, Laws, 2014, ch. 352, § 6; Laws, 2016, ch. 510, § 3, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 2, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 399, § 6, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was subject to the repealer in Section 65 of Chapter 510, Laws of 2016, effective July 1, 2020, and the repealer in Section 41-3-20, effective July 1, 2021. Section 65, Chapter 510, Laws of 2016, was subsequently repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020. This section remains subject to the repealer in Section 41-3-20, effective July 1, 2021.

This section was reenacted without change by Laws of 2021, ch. 399, § 6. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Laws of 2021, ch. 399, § 13, effective March 25, 2021, provides:

"SECTION 13. On or before December 1, 2021, each existing health care facility with child/adolescent psychiatric or child/adolescent chemical dependency beds shall file with the Mississippi Department of Health, the Mississippi Department of Mental Health and the Coordinator of Mental Health Accessibility a description of their plan to help their patients remain in noninstitutional settings when practical. This plan may include coordination with the community mental health centers and other providers. The plan need not be detailed or lengthy, but it shall set forth efforts to ensure the facility is coordinating with other entities."

Amendment Notes — The 2020 amendment reenacted the section without change.

The 2021 amendment, effective March 25, 2021, reenacted the section without change.

OPINIONS OF THE ATTORNEY GENERAL

Based on the requirement set forth in Section 41-67-23 that the Department of Health inspect wastewater systems at the behest of the property owner, or his lender, coupled with the authority to charge and collect reasonable fees for health services as set out in Section 41-3-15(4)(f), the Department of Health may recoup actual costs associated with its obligations imposed in Section 41-67-23. Thompson, April 18, 1995, A.G. Op. #95-0240.

§ 41-3-15.1. Mississippi Center for Rural Health Innovation established; purpose; definition of "rural hospital"; areas of service provided; department to provide personnel and resources; department authorized to enter into contracts.

(1) The Mississippi Center for Rural Health Innovation is established within the Office of Rural Health of the State Department of Health. The purpose of the center is to provide services and resources to rural hospitals, critical access hospitals, rural health clinics and rural federally qualified health centers, including expert analysis, guidance, training opportunities and telehealth investment. For the purposes of this section, the term "rural hospital" means a licensed Mississippi hospital that:

(a) Has fifty (50) or fewer licensed general acute, nonspecialty beds; or

(b) Is located within the geographic boundaries of a municipality that has a population of less than seven thousand four hundred (7,400) people according to the 2010 U.S. Census.

(2) The specific areas of service to be provided by the center shall be, at a minimum:

(a) Expert consultation, including, but not limited to, detailed financial evaluation, service line assessment, contract review and transitional planning;

(b) Telehealth innovation, including, but not limited to, telehealth expert consultation and telehealth development grants;

(c) Business development training grants, including, but not limited to, billing specialist training grants and administrative development grants;

(d) Peer support network services; and

(e) Any other related services as determined by the State Board of Health.

(3) The department shall provide personnel and resources as necessary to provide for the operation of the center, and shall be authorized to enter into contracts as necessary to carry out the purpose of the center.

HISTORY: Laws, 2020, ch. 388, § 1, eff from and after July 1, 2020.

§ 41-3-16. Local governments and rural water systems improvements revolving loan and grant program [Repealed effective July 1, 2024].

HISTORY: Laws, 1995, ch. 521, §§ 1-3; Laws, 1996, ch. 542, § 1; Laws, 1998, ch. 375, § 1; Laws, 2000, ch. 595, § 1; reenacted without change, Laws, 2001, ch. 420, § 7; Laws, 2002, ch. 399, § 1; Laws, 2006, ch. 545, § 1; Laws, 2007, ch. 514, § 8; Laws, 2007, ch. 583, § 1; reenacted without change, Laws, 2010, ch. 494, § 3; reenacted without change, Laws, 2010, ch. 505, § 7; reenacted and amended, Laws, 2014, ch. 352, § 7; reenacted without change, Laws, 2017, ch. 374, § 6, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 399, § 7, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was reenacted without change by Laws of 2021, ch. 399, § 7. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2021 amendment, effective March 25, 2021, reenacted the section without change.

§ 41-3-17. Power to make and publish rules and regulations [Repealed effective July 1, 2024].

HISTORY: Codes, 1892, § 2273; 1906, § 2489; Hemingway's 1917, § 4838; 1930, § 4875; 1942, § 7031; Laws, 1968, ch. 441, § 3; reenacted without change, Laws, 1982, ch. 494, § 7; reenacted and amended, Laws, 1990, ch. 568, § 7; reenacted without change, Laws, 1994, ch. 462, § 7; reenacted, Laws, 1995, ch. 363, § 7; Laws, 1996, ch. 516, § 22; reenacted without change, Laws, 2001, ch. 420, § 8; reenacted without change, Laws, 2007, ch. 514, § 9; reenacted without change, Laws, 2010, ch. 505, § 8; reenacted without change, Laws, 2014, ch. 352, § 8; reenacted without change, Laws, 2017, ch. 374, § 7, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 399, § 8, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was reenacted without change by Laws of 2021, ch. 399, § 8. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2021 amendment, effective March 25, 2021, reenacted the section without change.

§ 41-3-18. Assessment of fees [Repealed effective July 1, 2024].

HISTORY: Laws, 1986, ch. 371, § 2; Laws, 1988, ch. 395, § 5; Laws, 1989, ch. 313, § 1; Laws, 1989, ch. 547, § 1; reenacted, Laws, 1990, ch. 568, § 8; Laws, 1991, ch. 606, § 1; reenacted without change, Laws, 1994, ch. 462, § 8; reenacted, Laws, 1995, ch. 363, § 8; Laws, 1997, ch. 427, § 1; reenacted without change, Laws, 2001, ch. 420, § 9; reenacted and amended, Laws, 2007, ch. 514, § 10; Laws, 2008, ch. 315, § 1; Laws, 2009, ch. 331, § 1; reenacted without change, Laws, 2010, ch. 505, § 9; reenacted without change, Laws, 2014, ch. 352, § 9; Laws, 2016, ch. 510, § 4, eff from and after July 1, 2016; brought forward without change, Laws, 2020, ch. 473, § 3, eff from and after July 1, 2020; reenacted without change, Laws, 2021, ch. 399, § 9, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was subject to the repealer in Section 65 of Chapter

510, Laws of 2016, effective July 1, 2020, and the repealer in Section 41-3-20, effective July 1, 2021. Section 65, Chapter 510, Laws of 2016, was subsequently repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020. This section remains subject to the repealer in Section 41-3-20, effective July 1, 2021.

This section was reenacted without change by Laws of 2021, ch. 399, § 9. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

The 2021 amendment, effective March 25, 2021, reenacted the section without change.

§ 41-3-19. Report to the Governor [Repealed effective July 1, 2024].

HISTORY: Codes, 1892, § 2272; 1906, § 2488; Hemingway's 1917, § 4837; 1930, § 4874; 1942, § 7030; reenacted and amended, Laws, 1982, ch. 494, § 8; reenacted, Laws, 1990, ch. 568, § 9; reenacted without change, Laws, 1994, ch. 462, § 9; reenacted, Laws, 1995, ch. 363, § 9; reenacted without change, Laws, 2001, ch. 420, § 10; reenacted without change, Laws, 2007, ch. 514, § 11; reenacted without change, Laws, 2010, ch. 505, § 10; reenacted without change, Laws, 2014, ch. 352, § 10; reenacted without change, Laws, 2017, ch. 374, § 8, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 399, § 10, eff from and after passage (approved March 25, 2021).

Editor's Notes — This section was reenacted without change by Laws of 2021, ch. 399, § 10. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2021 amendment, effective March 25, 2021, reenacted the section without change.

§ 41-3-20. Repeal of Sections 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19.

Sections 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19, which create the State Board of Health, establish the position of Executive Officer of the State Department of Health and establish the State Department of Health and prescribe its powers and duties, shall stand repealed on July 1, 2024.

HISTORY: Laws, 1994, ch. 462, § 11; Laws, 1995, ch. 363, § 10; Laws, 2001, ch. 420, § 11; Laws, 2007, ch. 514, § 1; Laws, 2010, ch. 505, § 11; Laws, 2014, ch. 352, § 13; Laws, 2017, ch. 374, § 9, eff from and after July 1, 2017; Laws, 2021, ch. 399, § 11, eff from and after passage (approved March 25, 2021).

Amendment Notes — The 2021 amendment, effective March 25, 2021, deleted "reconstituted" following "which created the," and extended the date of the repealer for §§ 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19 by substituting "July 1, 2024" for "July 1, 2021."

§ 41-3-65. Increase of fees for services or issuance and renewal of licenses and registrations.

Except as otherwise provided by law, the State Board of Health or the State Department of Health may increase the amount of any fee charged by the

board or the department for providing a service, including the issuance and renewal of licenses and registrations, not more than two (2) times during the period from July 1, 2016, through June 30, 2020, with the percentage of each increase being not more than fifteen percent (15%) of the amount of the fee in effect at the time of the increase.

HISTORY: Laws, 2016, ch. 510, § 1, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 4, eff from and after July 1, 2020.

Editor's Notes — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

This section was reenacted without change by Laws of 2020, ch. 473, § 4. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

CHAPTER 4.

DEPARTMENT OF MENTAL HEALTH

Sec.
41-4-7. Powers and duties of board.

§ 41-4-1. Declaration of goal; promulgation of regulations to ensure certain core mental health services are provided throughout the state.

Editor's Notes — Laws of 2020, ch. 454, § 1 provides:

"SECTION 1. (1) The Mississippi Board of Mental Health, acting on behalf of and through the Mississippi Department of Mental Health, is authorized to sell certain state-owned real property and any improvements thereon, which served as the former Old Friendship Center located in the City of Meridian, Lauderdale County, Mississippi, such property being more particularly described as follows:

"Lots 1, 2, 3, and 4 in Block 8, Section 13, Township 6, Range 15 of Gallagher's (addition) Survey; recorded in Book 2294, page 65 of the records in the office of the Chancery Clerk of Lauderdale County, Mississippi.

"(2) The real property and any improvements thereon described under subsection (1) of this section shall be sold for not less than the fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, one (1) of which shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

"(3) All monies derived from the sale of the property described in subsection (1) of this section shall be deposited into a special fund created in the State Treasury for the use and benefit of the East Central State Hospital. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on the amounts remaining in the special fund shall be deposited to the credit of the special fund.

"(4) The Department of Finance and Administration may correct any discrepancies in the legal description provided in this section.

"(5) The State of Mississippi shall retain all mineral rights to the property sold under this section."

§ 41-4-3. State Board of Mental Health.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory bar to appointment of individual to State Board of Mental Health to represent Fifth Congressional District when individual lived in Fifth District at time Section 41-4-3 was passed but currently resides in Fourth Congressional District. Shows, Jan. 18, 1994, A.G. Op. #94-003.

§ 41-4-5. State Department of Mental Health.

Editor's Notes — Laws of 2021, ch. 399, § 13, effective March 25, 2021, provides:

"SECTION 13. On or before December 1, 2021, each existing health care facility with child/adolescent psychiatric or child/adolescent chemical dependency beds shall file with the Mississippi Department of Health, the Mississippi Department of Mental Health and the Coordinator of Mental Health Accessibility a description of their plan to help their patients remain in noninstitutional settings when practical. This plan may include coordination with the community mental health centers and other providers. The plan need not be detailed or lengthy, but it shall set forth efforts to ensure the facility is coordinating with other entities."

§ 41-4-7. Powers and duties of board.

The State Board of Mental Health shall have the following powers and duties:

(a) To appoint a full-time Executive Director of the Department of Mental Health, who shall be employed by the board and shall serve as executive secretary to the board. The first director shall be a duly licensed physician with special interest and competence in psychiatry, and shall possess a minimum of three (3) years' experience in clinical and administrative psychiatry. Subsequent directors shall possess at least a master's degree or its equivalent, and shall possess at least ten (10) years' administrative experience in the field of mental health. The salary of the executive director shall be determined by the board;

(b) To appoint a Medical Director for the Department of Mental Health. The medical director shall provide clinical oversight in the implementation of evidence-based and best practices; provide clinical leadership in the integration of mental health, intellectual disability and addiction services with community partners in the public and private sectors; and provide oversight regarding standards of care. The medical director shall serve at the will and pleasure of the board, and will undergo an annual review of job performance and future service to the department;

(c) To cooperate with the Strategic Planning and Best Practices Committee created in Section 41-4-10, Mississippi Code of 1972, in establishing and implementing its state strategic plan;

(d) To develop a strategic plan for the development of services for persons with mental illness, persons with developmental disabilities and other clients of the public mental health system. Such strategic planning program shall require that the board, acting through the Strategic Planning

and Best Practices Committee, perform the following functions respecting the delivery of services:

(i) Establish measures for determining the efficiency and effectiveness of the services specified in Section 41-4-1(2);

(ii) Conducting studies of community-based care in other jurisdictions to determine which services offered in these jurisdictions have the potential to provide the citizens of Mississippi with more effective and efficient community-based care;

(iii) Evaluating the efficiency and effectiveness of the services specified in Section 41-4-1(2);

(iv) Recommending to the Legislature by January 1, 2014, any necessary additions, deletions or other changes necessary to the services specified in Section 41-4-1(2);

(v) Implementing by July 1, 2012, a system of performance measures for the services specified in Section 41-4-1(2);

(vi) Recommending to the Legislature any changes that the department believes are necessary to the current laws addressing civil commitment;

(vii) Conducting any other activities necessary to the evaluation and study of the services specified in Section 41-4-1(2);

(viii) Assisting in conducting all necessary strategic planning for the delivery of all other services of the department. Such planning shall be conducted so as to produce a single strategic plan for the services delivered by the public mental health system and shall establish appropriate mission statements, goals, objectives and performance indicators for all programs and services of the public mental health system. For services other than those specified in Section 41-4-1(2), the committee shall recommend to the State Board of Mental Health a strategic plan that the board may adopt or modify;

(e) To set up state plans for the purpose of controlling and treating any and all forms of mental and emotional illness, alcoholism, drug misuse and developmental disabilities;

(f) [Repealed]

(g) To enter into contracts with any other state or federal agency, or with any private person, organization or group capable of contracting, if it finds such action to be in the public interest;

(h) To collect reasonable fees for its services; however, if it is determined that a person receiving services is unable to pay the total fee, the department shall collect any amount such person is able to pay;

(i) To certify, coordinate and establish minimum standards and establish minimum required services, as specified in Section 41-4-1(2), for regional mental health and intellectual disability commissions and other community service providers for community or regional programs and services in adult mental health, children and youth mental health, intellectual disabilities, alcoholism, drug misuse, developmental disabilities, compulsive gambling, addictive disorders and related programs throughout the

state. Such regional mental health and intellectual disability commissions and other community service providers shall, on or before July 1 of each year, submit an annual operational plan to the State Department of Mental Health for approval or disapproval based on the minimum standards and minimum required services established by the department for certification and itemize the services specified in Section 41-4-1(2), including financial statements. As part of the annual operation plan required by this paragraph (i) submitted by any regional community mental health center or by any other reasonable certification deemed acceptable by the department, the community mental health center shall state those services specified in Section 41-4-1(2) that it will provide and also those services that it will not provide. If the department finds deficiencies in the plan of any regional commission or community service provider based on the minimum standards and minimum required services established for certification, the department shall give the regional commission or community service provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. The regional commission or community service provider shall develop a sustainability business plan within thirty (30) days of being placed on probation, which shall be signed by all commissioners and shall include policies to address one or more of the following: the deficiencies in programmatic services, clinical service staff expectations, timely and appropriate billing, processes to obtain credentialing for staff, monthly reporting processes, third-party financial reporting and any other required documentation as determined by the department. After the six-month probationary period, if the department determines that the regional commission or community service provider still does not meet the minimum standards and minimum required services established for certification, the department may remove the certification of the commission or provider and from and after July 1, 2011, the commission or provider shall be ineligible for state funds from Medicaid reimbursement or other funding sources for those services. However, the department shall not mandate a standard or service, or decertify a regional commission or community service provider for not meeting a standard or service, if the standard or service does not have funding appropriated by the Legislature or have a state, federal or local funding source identified by the department. No county shall be required to levy millage to provide a mandated standard or service above the minimum rate required by Section 41-19-39. After the six-month probationary period, the department may identify an appropriate community service provider to provide any core services in that county that are not provided by a community mental health center. However, the department shall not offer reimbursement or other accommodations to a community service provider of core services that were not offered to the decertified community mental health center for the same or similar services. The State Board of Mental Health shall promulgate rules and regulations necessary to implement the provisions of this paragraph (i), in accordance with the Administrative Procedures Law (Section 25-43-1.101 et seq.);

(j) To establish and promulgate reasonable minimum standards for the construction and operation of state and all Department of Mental Health certified facilities, including reasonable minimum standards for the admission, diagnosis, care, treatment, transfer of patients and their records, and also including reasonable minimum standards for providing day care, outpatient care, emergency care, inpatient care and follow-up care, when such care is provided for persons with mental or emotional illness, an intellectual disability, alcoholism, drug misuse and developmental disabilities;

(k) To implement best practices for all services specified in Section 41-4-1(2), and to establish and implement all other services delivered by the Department of Mental Health. To carry out this responsibility, the board shall require the department to establish a division responsible for developing best practices based on a comprehensive analysis of the mental health environment to determine what the best practices for each service are. In developing best practices, the board shall consider the cost and benefits associated with each practice with a goal of implementing only those practices that are cost-effective practices for service delivery. Such best practices shall be utilized by the board in establishing performance standards and evaluations of the community mental health centers' services required by paragraph (d) of this section;

(*l*) To assist community or regional programs consistent with the purposes of this chapter by making grants and contracts from available funds;

(m) To establish and collect reasonable fees for necessary inspection services incidental to certification or compliance;

(n) To accept gifts, trusts, bequests, grants, endowments or transfers of property of any kind;

(o) To receive monies coming to it by way of fees for services or by appropriations;

(p) To serve as the single state agency in receiving and administering any and all funds available from any source for the purpose of service delivery, training, research and education in regard to all forms of mental illness, intellectual disabilities, alcoholism, drug misuse and developmental disabilities, unless such funds are specifically designated to a particular agency or institution by the federal government, the Mississippi Legislature or any other grantor;

(q) To establish mental health holding centers for the purpose of providing short-term emergency mental health treatment, places for holding persons awaiting commitment proceedings or awaiting placement in a state mental health facility following commitment, and for diverting placement in a state mental health facility. These mental health holding facilities shall be readily accessible, available statewide, and be in compliance with emergency services' minimum standards. They shall be comprehensive and available to triage and make appropriate clinical disposition, including the capability to access inpatient services or less restrictive alternatives, as needed, as

determined by medical staff. Such facility shall have medical, nursing and behavioral services available on a twenty-four-hour-a-day basis. The board may provide for all or part of the costs of establishing and operating the holding centers in each district from such funds as may be appropriated to the board for such use, and may participate in any plan or agreement with any public or private entity under which the entity will provide all or part of the costs of establishing and operating a holding center in any district;

(r) To certify/license case managers, mental health therapists, intellectual disability therapists, mental health/intellectual disability program administrators, addiction counselors and others as deemed appropriate by the board. Persons already professionally licensed by another state board or agency are not required to be certified/licensed under this section by the Department of Mental Health. The department shall not use professional titles in its certification/licensure process for which there is an independent licensing procedure. Such certification/licensure shall be valid only in the state mental health system, in programs funded and/or certified by the Department of Mental Health, and/or in programs certified/licensed by the State Department of Health that are operated by the state mental health system serving persons with mental illness, an intellectual disability, a developmental disability or addictions, and shall not be transferable;

(s) To develop formal mental health worker qualifications for regional mental health and intellectual disability commissions and other community service providers. The State Personnel Board shall develop and promulgate a recommended salary scale and career ladder for all regional mental health/intellectual disability center therapists and case managers who work directly with clients. The State Personnel Board shall also develop and promulgate a career ladder for all direct care workers employed by the State Department of Mental Health;

(t) The employees of the department shall be governed by personnel merit system rules and regulations, the same as other employees in state services;

(u) To establish such rules and regulations as may be necessary in carrying out the provisions of this chapter, including the establishment of a formal grievance procedure to investigate and attempt to resolve consumer complaints;

(v) To grant easements for roads, utilities and any other purpose it finds to be in the public interest;

(w) To survey statutory designations, building markers and the names given to mental health/intellectual disability facilities and proceedings in order to recommend deletion of obsolete and offensive terminology relative to the mental health/intellectual disability system. Based upon a recommendation of the executive director, the board shall have the authority to name/rename any facility operated under the auspices of the Department of Mental Health for the sole purpose of deleting such terminology;

(x) To ensure an effective case management system directed at persons who have been discharged from state and private psychiatric hospitals to ensure their continued well-being in the community;

(y) To develop formal service delivery standards designed to measure the quality of services delivered to community clients, as well as the timeliness of services to community clients provided by regional mental health/intellectual disability commissions and other community services providers;

(z) To establish regional state offices to provide mental health crisis intervention centers and services available throughout the state to be utilized on a case-by-case emergency basis. The regional services director, other staff and delivery systems shall meet the minimum standards of the Department of Mental Health;

(aa) To require performance contracts with community mental health/intellectual disability service providers to contain performance indicators to measure successful outcomes, including diversion of persons from inpatient psychiatric hospitals, rapid/timely response to emergency cases, client satisfaction with services and other relevant performance measures;

(bb) To enter into interagency agreements with other state agencies, school districts and other local entities as determined necessary by the department to ensure that local mental health service entities are fulfilling their responsibilities to the overall state plan for behavioral services;

(cc) To establish and maintain a toll-free grievance reporting telephone system for the receipt and referral for investigation of all complaints by clients of state and community mental health/intellectual disability facilities;

(dd) To establish a peer review/quality assurance evaluation system that assures that appropriate assessment, diagnosis and treatment is provided according to established professional criteria and guidelines;

(ee) To develop and implement state plans for the purpose of assisting with the care and treatment of persons with Alzheimer's disease and other dementia. This plan shall include education and training of service providers, caregivers in the home setting and others who deal with persons with Alzheimer's disease and other dementia, and development of adult day care, family respite care and counseling programs to assist families who maintain persons with Alzheimer's disease and other dementia in the home setting. No agency shall be required to provide any services under this section until such time as sufficient funds have been appropriated or otherwise made available by the Legislature specifically for the purposes of the treatment of persons with Alzheimer's and other dementia;

(ff) Working with the advice and consent of the administration of Ellisville State School, to enter into negotiations with the Economic Development Authority of Jones County for the purpose of negotiating the possible exchange, lease or sale of lands owned by Ellisville State School to the Economic Development Authority of Jones County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that the financial interest of the persons with an intellectual disability served by Ellisville State School will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the

citizens of the State of Mississippi and Jones County, and encourages fairness to the Economic Development Authority of Jones County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Ellisville State School must have the approval of the State Board of Mental Health. The State Board of Mental Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for persons with an intellectual disability served at Ellisville State School.

If the State Board of Mental Health authorizes the sale of lands owned by Ellisville State School, as provided for under this paragraph (ff), the monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the "Ellisville State School Client's Trust Fund." The principal of the trust fund shall remain inviolate and shall never be expended. Any interest earned on the principal may be expended solely for the benefits of clients served at Ellisville State School. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Ellisville State School may use any interest earned on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Ellisville State School. Ellisville State School shall make known to the Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of interest earned on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Ellisville State School with an annual report on the Ellisville State School Client's Trust Fund to indicate the total monies in the trust fund, interest earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/intellectual disability services provided by hospitals as defined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature;

(gg) Working with the advice and consent of the administration of Boswell Regional Center, to enter into negotiations with the Economic Development Authority of Simpson County for the purpose of negotiating the

possible exchange, lease or sale of lands owned by Boswell Regional Center to the Economic Development Authority of Simpson County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that the financial interest of the persons with an intellectual disability served by Boswell Regional Center will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the citizens of the State of Mississippi and Simpson County, and encourages fairness to the Economic Development Authority of Simpson County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Boswell Regional Center must have the approval of the State Board of Mental Health. The State Board of Mental Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for persons with an intellectual disability served at Boswell Regional Center. In any such exchange, lease or sale of such lands owned by Boswell Regional Center, title to all minerals, oil and gas on such lands shall be reserved, together with the right of ingress and egress to remove same, whether such provisions be included in the terms of any such exchange, lease or sale or not.

If the State Board of Mental Health authorizes the sale of lands owned by Boswell Regional Center, as provided for under this paragraph (gg), the monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the "Boswell Regional Center Client's Trust Fund." The principal of the trust fund shall remain inviolate and shall never be expended. Any earnings on the principal may be expended solely for the benefits of clients served at Boswell Regional Center. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any earnings on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Boswell Regional Center may use any earnings on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Boswell Regional Center. Boswell Regional Center shall make known to the Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of the earnings on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Boswell Regional Center with an annual report on the Boswell Regional Center Client's Trust Fund to indicate the total monies in the trust fund, interest and other income earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/intellectual disability services provided by hospitals as de-

fined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature;

(hh) Notwithstanding any other section of the code, the Board of Mental Health shall be authorized to fingerprint and perform a criminal history record check on every employee or volunteer. Every employee and volunteer shall provide a valid current social security number and/or driver's license number which shall be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check;

(ii) The Department of Mental Health shall have the authority for the development of a consumer friendly single point of intake and referral system within its service areas for persons with mental illness, an intellectual disability, developmental disabilities or alcohol or substance abuse who need assistance identifying or accessing appropriate services. The department will develop and implement a comprehensive evaluation procedure ensuring that, where appropriate, the affected person or their parent or legal guardian will be involved in the assessment and planning process. The department, as the point of intake and as service provider, shall have the authority to determine the appropriate institutional, hospital or community care setting for persons who have been diagnosed with mental illness, an intellectual disability, developmental disabilities and/or alcohol or substance abuse, and may provide for the least restrictive placement if the treating professional believes such a setting is appropriate, if the person affected or their parent or legal guardian wants such services, and if the department can do so with a reasonable modification of the program without creating a fundamental alteration of the program. The least restrictive setting could be an institution, hospital or community setting, based upon the needs of the affected person or their parent or legal guardian;

(jj) To have the sole power and discretion to enter into, sign, execute and deliver long-term or multiyear leases of real and personal property owned by the Department of Mental Health to and from other state and federal agencies and private entities deemed to be in the public's best interest. Any monies derived from such leases shall be deposited into the funds of the Department of Mental Health for its exclusive use. Leases to private entities shall be approved by the Department of Finance and Administration and all leases shall be filed with the Secretary of State;

(kk) To certify and establish minimum standards and minimum required services for county facilities used for housing, feeding and providing medical treatment for any person who has been involuntarily ordered admitted to a treatment center by a court of competent jurisdiction. The

minimum standard for the initial assessment of those persons being housed in county facilities is for the assessment to be performed by a physician, preferably a psychiatrist, or by a nurse practitioner, preferably a psychiatric nurse practitioner. If the department finds deficiencies in any such county facility or its provider based on the minimum standards and minimum required services established for certification, the department shall give the county or its provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the county or its provider still does not meet the minimum standards and minimum required services, the department may remove the certification of the county or provider and require the county to contract with another county having a certified facility to hold those persons for that period of time pending transportation and admission to a state treatment facility. Any cost incurred by a county receiving an involuntarily committed person from a county with a decertified holding facility shall be reimbursed by the home county to the receiving county; and

(*ll*) To provide orientation training to all new commissioners of regional commissions and annual training for all commissioners with continuing education regarding the Mississippi mental health system and services as developed by the State Department of Mental Health. Training shall be provided at the expense of the department except for travel expenses which shall be paid by the regional commission.

HISTORY: Laws, 1978, ch. 388, § 1; Laws, 1996, ch. 446, § 1; Laws, 1997, ch. 328, § 1; Laws, 1997, ch. 384, § 1; Laws, 1997, ch. 587, § 2; Laws, 1998, ch. 329, § 1; Laws, 1998, ch. 341, § 1; Laws, 1999, ch. 342, § 1; Laws, 2001, ch. 601, § 1; Laws, 2002, ch. 357, § 1; Laws, 2003, ch. 371, § 1; Laws, 2003, ch. 438, § 1; Laws, 2004, ch. 517, § 1; Laws, 2005, ch. 387, § 1; Laws, 2008, ch. 523, § 1; Laws, 2009, ch. 543, § 1; Laws, 2010, ch. 476, § 19; Laws, 2012, ch. 509, § 1; Laws, 2013, ch. 549, § 1, eff from and after July 1, 2013; Laws, 2020, ch. 479, § 8, eff from and after passage (approved July 8, 2020).

Editor's Notes — Laws of 2019, ch. 480, § 1, effective April 16, 2019, provides:

"SECTION 1. (1) The State Board of Mental Health, acting on behalf of the Mississippi Department of Mental Health, is authorized to transfer and convey a parcel or unused portions thereof of certain real property located in Senatobia, Tate County, Mississippi, which was originally conveyed for purposes designated by the Department of Mental Health, to the Board of Supervisors of Tate County, Mississippi, and being more particularly described as follows:

[For a complete description of the property, see Section 1 of Chapter 480, Laws of 2019.]

"(2) Of the property described in subsection (1) of this section, the State Board of Mental Health shall only transfer and convey the unused and undeveloped portion of the property specifically designated for use by the Mississippi Department of Mental Health to the Board of Supervisors of Tate County. At the sole discretion of the State Board of Mental Health, in executing a document of conveyance for the property described, which may include a provision to retain a right-of-way, which shall consist of a minimum of a twenty (20) feet, but shall not exceed the maximum of thirty (30) feet which shall inure to the benefit of the Mississippi Department of Mental Health for the purposes of providing an additional green space boundary between the new county and

state property lines. This additional space shall serve as a buffer to protect the safety and privacy of the vulnerable adults receiving services at the Department of Mental Health Community Homes and to ensure compliance with the Mississippi Department of Health regulatory standards for an Intermediate Care Facility (ICF). In conformity to the provisions of this subsection, the Board of Supervisors of Tate County is restricted from engaging in any activity upon the property described in subsection (1) of this section that will adversely impact the operation, safety or comfort of the inhabitants and staff personnel of the facility operated by the Department of Mental Health, which is located in close proximity to the property to be conveyed.

"(3) The State of Mississippi shall retain all mineral rights to the real property transferred under this section.

"(4) The State Board of Mental Health is authorized to correct any discrepancies in the legal description of the property provided in this section."

Subsection (f), which gave the board the authority to supervise, coordinate and establish standards for all operations and activities of the state related to mental health and providing mental health services, was repealed by its own terms, effective July 1, 2017.

Laws of 2020, ch. 479, § 1, effective July 8, 2020, provides:

"SECTION 1. This act [Chapter 479, Laws of 2020] shall be known and may be cited as the Rose Isabel Williams Mental Health Reform act of 2020. The goal of the act is to reform the current Mississippi mental health delivery system so that necessary service, supports and operational structure for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides for a Coordinator of Mental Health Accessibility with the powers and duties set forth in this act."

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (i), added "including financial statements" at the end of the second sentence, and added the fifth sentence; and added (*ll*) and made a related change.

OPINIONS OF THE ATTORNEY GENERAL

The Department of Mental Health may accept a donation of land, a house, and improvements from the Clarke College Alumni Association and the Department may allow the Association to retain the use of a portion of the house, provided such use is reserved by grant as a condition of the donation. Hendrix, May 9, 2003, A.G. Op. 03-0188.

The Mississippi Department of Mental Health may enter into long-term or multi-year leases of real and personal property without complying with the mandates of G.S. 7-11-11, 29-1-107, or 29-5-2. Anderson, July 7, 2003, A.G. Op. 03-0242.

The exemption authority provided the Mississippi Department of Mental Health (MDMH) in this section does not apply to other state or federal agencies that may be a party to the lease agreement with the MDMH unless these entities have separate and distinct statutory authority to waive the requirements of G.S. 7-11-11, 29-1-107, and 29-5-2. Anderson, July 7, 2003, A.G. Op. 03-0242.

The Mississippi Department of Mental Health cannot enter into a long term lease agreements with another state agency unless that agency has specific exemption authority from the lease requirements found in G.S. 7-11-11, 29-1-107, and 29-5-2. Anderson, July 7, 2003, A.G. Op. 03-0242.

CHAPTER 7.

HOSPITAL AND HEALTH CARE COMMISSIONS

HEALTH CARE CERTIFICATE OF NEED LAW OF 1979

Sec.

§ 41-7-171. Short title.

OPINIONS OF THE ATTORNEY GENERAL

Sections 37-115-21 et seq. establish the University Medical Center and its teaching hospital independently of the certificate of need statutes and, therefore, the University of Mississippi Medical Center is not subject to the certificate of need provisions. Conerely, July 14, 2000, A.G. Op. #2000-0326.

§ 41-7-173. Definitions.

JUDICIAL DECISIONS

ANALYSIS

1. Certificate of need.
2. Health care facility.

1. Certificate of need.

Because a limited liability company fell squarely into the exception to the health care facility classification as defined by Miss. Code Ann. § 41-7-173(h), the appeal statute, Miss. Code Ann. § 41-7-201(2)(a-h), did not apply to the case or to any appeal pertaining to the granting or denying of a certificate of need to the private practice of physicians; the non-applicability of the statute further meant that the statutory affirmance of the Department of Health's order never occurred. Vicksburg Healthcare, LLC v. Miss. State Dep't of Health & Wound Care Mgmt., 292 So. 3d 223, 2020 Miss. LEXIS 76 (Miss. 2020).

2. Health care facility.

Because it was a private physician practice, a limited liability company (LLC) did not qualify as a "health care facility"; the LLC unequivocally stated in its application for a certificate of need that it was a private physician clinic. Vicksburg Healthcare, LLC v. Miss. State Dep't of Health & Wound Care Mgmt., 292 So. 3d 223, 2020 Miss. LEXIS 76 (Miss. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Offices of private physicians and dentists are excluded from definition of ambulatory surgical facility by Section 41-7-173(h)(vii) and ambulatory surgical services provided in such offices are not institutional health services. Thompson, March 22, 1994, A.G. Op. #93-0924.

Offices of private physicians and dentists in which ambulatory surgical services are provided are not health care facilities and are therefore not subject to certificate of need review. Thompson, March 22, 1994, A.G. Op. #93-0924.

An office that is a large, all encompass-

ing, multi-speciality ambulatory surgical facility, is not a private office as intended by the Section 41-7-173. Moreover, a facility is a health care facility inasmuch as it would provide institutional health services. Accordingly, such a facility would not be exempt from the certificate of need requirements set forth in section 41-7-191(1)(d)(xi), despite the fact that it is owned by a physicians' group. Thompson, January 9, 1996, A.G. Op. #95-0802.

The establishment of a Distinct Part, PPS-excluded acute rehabilitation unit in an existing hospital, without the addition of any licensed beds and when the beds at issue will remain licensed as acute care beds and only the Medicare reimbursement schedule will change, is a project that requires certificate of need review and approval if the unit is either (1) a new health care facility, or (2) proposes to offer a new health service which was not previously offered by the hospital. Thompson, July 2, 1999, A.G. Op. #99-0309.

A board of trustees of a community hospital may acquire a building and related equipment from a physician with the permission of the owner of the community hospital and lease the building back to the physician, and so long as the center is not a separate identifiable legal entity, a certificate of need therefor is not required. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

A board of trustees of a community hospital may construct and equip a facility suitable for a single service ambulatory surgery facility and may thereafter lease the building and equipment to a physician. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

§ 41-7-185. Powers.

OPINIONS OF THE ATTORNEY GENERAL

The Governor does not have authority to amend the State Health Plan, as opposed to simply approving or disapproving it. Thompson, June 10, 1999, A.G. Op. #99-0275.

§ 41-7-187. Certificate of need program.

OPINIONS OF THE ATTORNEY GENERAL

Legislation (Laws, 1982, ch. 482, § 9) which was never codified and which limits the fee for certificates of need applications is valid and binding upon the Department of Health. Amy, Sept. 8, 2006, A.G. Op. 06-0385.

§ 41-7-191. Certificate of need; activities for which certificate is required.

(1) No person shall engage in any of the following activities without obtaining the required certificate of need:

(a) The construction, development or other establishment of a new health care facility, which establishment shall include the reopening of a health care facility that has ceased to operate for a period of sixty (60) months or more;

(b) The relocation of a health care facility or portion thereof, or major medical equipment, unless such relocation of a health care facility or portion thereof, or major medical equipment, which does not involve a capital expenditure by or on behalf of a health care facility, is within five thousand

two hundred eighty (5,280) feet from the main entrance of the health care facility;

(c) Any change in the existing bed complement of any health care facility through the addition or conversion of any beds or the alteration, modernizing or refurbishing of any unit or department in which the beds may be located; however, if a health care facility has voluntarily delicensed some of its existing bed complement, it may later relicense some or all of its delicensed beds without the necessity of having to acquire a certificate of need. The State Department of Health shall maintain a record of the delicensing health care facility and its voluntarily delicensed beds and continue counting those beds as part of the state's total bed count for health care planning purposes. If a health care facility that has voluntarily delicensed some of its beds later desires to relicense some or all of its voluntarily delicensed beds, it shall notify the State Department of Health of its intent to increase the number of its licensed beds. The State Department of Health shall survey the health care facility within thirty (30) days of that notice and, if appropriate, issue the health care facility a new license reflecting the new contingent of beds. However, in no event may a health care facility that has voluntarily delicensed some of its beds be reissued a license to operate beds in excess of its bed count before the voluntary delicensure of some of its beds without seeking certificate of need approval;

(d) Offering of the following health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered:

(i) Open-heart surgery services;

(ii) Cardiac catheterization services;

(iii) Comprehensive inpatient rehabilitation services;

(iv) Licensed psychiatric services;

(v) Licensed chemical dependency services;

(vi) Radiation therapy services;

(vii) Diagnostic imaging services of an invasive nature, i.e. invasive digital angiography;

(viii) Nursing home care as defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);

(ix) Home health services;

(x) Swing-bed services;

(xi) Ambulatory surgical services;

(xii) Magnetic resonance imaging services;

(xiii) [Deleted]

(xiv) Long-term care hospital services;

(xv) Positron emission tomography (PET) services;

(e) The relocation of one or more health services from one physical facility or site to another physical facility or site, unless such relocation, which does not involve a capital expenditure by or on behalf of a health care facility, (i) is to a physical facility or site within five thousand two hundred

eighty (5,280) feet from the main entrance of the health care facility where the health care service is located, or (ii) is the result of an order of a court of appropriate jurisdiction or a result of pending litigation in such court, or by order of the State Department of Health, or by order of any other agency or legal entity of the state, the federal government, or any political subdivision of either, whose order is also approved by the State Department of Health;

(f) The acquisition or otherwise control of any major medical equipment for the provision of medical services; however, (i) the acquisition of any major medical equipment used only for research purposes, and (ii) the acquisition of major medical equipment to replace medical equipment for which a facility is already providing medical services and for which the State Department of Health has been notified before the date of such acquisition shall be exempt from this paragraph; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(g) Changes of ownership of existing health care facilities in which a notice of intent is not filed with the State Department of Health at least thirty (30) days prior to the date such change of ownership occurs, or a change in services or bed capacity as prescribed in paragraph (c) or (d) of this subsection as a result of the change of ownership; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(h) The change of ownership of any health care facility defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h), in which a notice of intent as described in paragraph (g) has not been filed and if the Executive Director, Division of Medicaid, Office of the Governor, has not certified in writing that there will be no increase in allowable costs to Medicaid from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership;

(i) Any activity described in paragraphs (a) through (h) if undertaken by any person if that same activity would require certificate of need approval if undertaken by a health care facility;

(j) Any capital expenditure or deferred capital expenditure by or on behalf of a health care facility not covered by paragraphs (a) through (h);

(k) The contracting of a health care facility as defined in subparagraphs (i) through (viii) of Section 41-7-173(h) to establish a home office, subunit, or branch office in the space operated as a health care facility through a formal arrangement with an existing health care facility as defined in subparagraph (ix) of Section 41-7-173(h);

(*l*) The replacement or relocation of a health care facility designated as a critical access hospital shall be exempt from subsection (1) of this section so long as the critical access hospital complies with all applicable federal law and regulations regarding such replacement or relocation;

(m) Reopening a health care facility that has ceased to operate for a period of sixty (60) months or more, which reopening requires a certificate of need for the establishment of a new health care facility.

(2) The State Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to, or expansion of any health care facility defined in subparagraphs (iv) (skilled nursing facility) and (vi) (intermediate care facility) of Section 41-7-173(h) or the conversion of vacant hospital beds to provide skilled or intermediate nursing home care, except as hereinafter authorized:

(a) The department may issue a certificate of need to any person proposing the new construction of any health care facility defined in subparagraphs (iv) and (vi) of Section 41-7-173(h) as part of a life care retirement facility, in any county bordering on the Gulf of Mexico in which is located a National Aeronautics and Space Administration facility, not to exceed forty (40) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the health care facility that were authorized under this paragraph (a).

(b) The department may issue certificates of need in Harrison County to provide skilled nursing home care for Alzheimer's disease patients and other patients, not to exceed one hundred fifty (150) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facilities that were authorized under this paragraph (b).

(c) The department may issue a certificate of need for the addition to or expansion of any skilled nursing facility that is part of an existing continuing care retirement community located in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (c), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of beds that may be authorized under the authority of this paragraph (c) shall not exceed sixty (60) beds.

(d) The State Department of Health may issue a certificate of need to any hospital located in DeSoto County for the new construction of a skilled

nursing facility, not to exceed one hundred twenty (120) beds, in DeSoto County. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (d).

(e) The State Department of Health may issue a certificate of need for the construction of a nursing facility or the conversion of beds to nursing facility beds at a personal care facility for the elderly in Lowndes County that is owned and operated by a Mississippi nonprofit corporation, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (e).

(f) The State Department of Health may issue a certificate of need for conversion of a county hospital facility in Itawamba County to a nursing facility, not to exceed sixty (60) beds, including any necessary construction, renovation or expansion. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (f).

(g) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hinds, Madison or Rankin County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (g).

(h) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hancock, Harrison or Jackson County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the facility that were authorized under this paragraph (h).

(i) The department may issue a certificate of need for the new construction of a skilled nursing facility in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (i), and if such skilled nursing facility at

any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 41-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (i) shall not exceed sixty (60) beds. If the skilled nursing facility authorized by the certificate of need issued under this paragraph is not constructed and fully operational within eighteen (18) months after July 1, 1994, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need, if it is still outstanding, and shall not issue a license for the skilled nursing facility at any time after the expiration of the eighteen-month period.

(j) The department may issue certificates of need to allow any existing freestanding long-term care facility in Tishomingo County and Hancock County that on July 1, 1995, is licensed with fewer than sixty (60) beds. For the purposes of this paragraph (j), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the long-term care facilities that were authorized under this paragraph (j).

(k) The department may issue a certificate of need for the construction of a nursing facility at a continuing care retirement community in Lowndes County. The total number of beds that may be authorized under the authority of this paragraph (k) shall not exceed sixty (60) beds. From and after July 1, 2001, the prohibition on the facility participating in the Medicaid program (Section 43-13-101 et seq.) that was a condition of issuance of the certificate of need under this paragraph (k) shall be revised as follows: The nursing facility may participate in the Medicaid program from and after July 1, 2001, if the owner of the facility on July 1, 2001, agrees in writing that no more than thirty (30) of the beds at the facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than thirty (30) patients in the facility in any month or for any patient in the facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the facility shall be a condition of licensure of the facility, and the agreement shall be fully binding on any subsequent owner of the facility if the ownership of the facility is transferred at any time after July 1, 2001. After this written

agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the facility for participation in the Medicaid program. If the facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the written agreement.

(*l*) Provided that funds are specifically appropriated therefor by the Legislature, the department may issue a certificate of need to a rehabilitation hospital in Hinds County for the construction of a sixty-bed long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities including persons with spinal cord and closed-head injuries and ventilator dependent patients. The provisions of Section 41-7-193(1) regarding substantial compliance with projection of need as reported in the current State Health Plan are waived for the purpose of this paragraph.

(m) The State Department of Health may issue a certificate of need to a county-owned hospital in the Second Judicial District of Panola County for the conversion of not more than seventy-two (72) hospital beds to nursing facility beds, provided that the recipient of the certificate of need agrees in writing that none of the beds at the nursing facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement in the nursing facility in any day or for any patient in the nursing facility. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the nursing facility if the ownership of the nursing facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify any of the beds in the nursing facility for participation in the Medicaid program. If the nursing facility violates the terms of the written agreement by admitting or keeping in the nursing facility on a regular or continuing basis any patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the nursing facility, at the time that the department determines, after a hearing complying with due process, that the nursing facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced

within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(n) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (n), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (n) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(o) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Leake County,

provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (o), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (o) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(p) The department may issue a certificate of need for the construction of a municipally owned nursing facility within the Town of Belmont in Tishomingo County, not to exceed sixty (60) beds, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the

Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (p), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 41-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(q)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next four (4) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each county in the state having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, in the manner provided in this paragraph (q). The total number of nursing facility beds that may be authorized by any certificate of need authorized under this paragraph (q) shall not exceed sixty (60) beds.

(ii) Subject to the provisions of subparagraph (v), during each of the next four (4) fiscal years, the department shall issue six (6) certificates of need for new nursing facility beds, as follows: During fiscal years 2000, 2001 and 2002, one (1) certificate of need shall be issued for new nursing facility beds in the county in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan that has the highest need in the district for those beds; and two (2) certificates of need shall be issued for new nursing facility beds in the two (2) counties from the state at large that have the highest need in the state for those beds, when considering the need on a statewide basis and without regard to the

Long-Term Care Planning Districts in which the counties are located. During fiscal year 2003, one (1) certificate of need shall be issued for new nursing facility beds in any county having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, that has not received a certificate of need under this paragraph (q) during the three (3) previous fiscal years. During fiscal year 2000, in addition to the six (6) certificates of need authorized in this subparagraph, the department also shall issue a certificate of need for new nursing facility beds in Amite County and a certificate of need for new nursing facility beds in Carroll County.

(iii) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in each Long-Term Care Planning District during each fiscal year shall first be available for nursing facility beds in the county in the district having the highest need for those beds, as shown in the fiscal year 1999 State Health Plan. If there are no applications for a certificate of need for nursing facility beds in the county having the highest need for those beds by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties in the district in descending order of the need for those beds, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county in the district.

(iv) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in the two (2) counties from the state at large during each fiscal year shall first be available for nursing facility beds in the two (2) counties that have the highest need in the state for those beds, as shown in the fiscal year 1999 State Health Plan, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. If there are no applications for a certificate of need for nursing facility beds in either of the two (2) counties having the highest need for those beds on a statewide basis by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties from the state at large in descending order of the need for those beds on a statewide basis, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county from the state at large.

(v) If a certificate of need is authorized to be issued under this paragraph (q) for nursing facility beds in a county on the basis of the need in the Long-Term Care Planning District during any fiscal year of the four-year period, a certificate of need shall not also be available under this paragraph (q) for additional nursing facility beds in that county on the basis of the need in the state at large, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in the state at large for that fiscal year. After a certificate of need has been

issued under this paragraph (q) for nursing facility beds in a county during any fiscal year of the four-year period, a certificate of need shall not be available again under this paragraph (q) for additional nursing facility beds in that county during the four-year period, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in succeeding fiscal years.

(vi) If more than one (1) application is made for a certificate of need for nursing home facility beds available under this paragraph (q), in Yalobusha, Newton or Tallahatchie County, and one (1) of the applicants is a county-owned hospital located in the county where the nursing facility beds are available, the department shall give priority to the county-owned hospital in granting the certificate of need if the following conditions are met:

1. The county-owned hospital fully meets all applicable criteria and standards required to obtain a certificate of need for the nursing facility beds; and

2. The county-owned hospital's qualifications for the certificate of need, as shown in its application and as determined by the department, are at least equal to the qualifications of the other applicants for the certificate of need.

(r)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next two (2) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan, to provide care exclusively to patients with Alzheimer's disease.

(ii) Not more than twenty (20) beds may be authorized by any certificate of need issued under this paragraph (r), and not more than a total of sixty (60) beds may be authorized in any Long-Term Care Planning District by all certificates of need issued under this paragraph (r). However, the total number of beds that may be authorized by all certificates of need issued under this paragraph (r) during any fiscal year shall not exceed one hundred twenty (120) beds, and the total number of beds that may be authorized in any Long-Term Care Planning District during any fiscal year shall not exceed forty (40) beds. Of the certificates of need that are issued for each Long-Term Care Planning District during the next two (2) fiscal years, at least one (1) shall be issued for beds in the northern part of the district, at least one (1) shall be issued for beds in the central part of the district, and at least one (1) shall be issued for beds in the southern part of the district.

(iii) The State Department of Health, in consultation with the Department of Mental Health and the Division of Medicaid, shall develop and prescribe the staffing levels, space requirements and other standards and requirements that must be met with regard to the nursing facility beds authorized under this paragraph (r) to provide care exclusively to patients with Alzheimer's disease.

(s) The State Department of Health may issue a certificate of need to a nonprofit skilled nursing facility using the Green House model of skilled nursing care and located in Yazoo City, Yazoo County, Mississippi, for the construction, expansion or conversion of not more than nineteen (19) nursing facility beds. For purposes of this paragraph (s), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this paragraph (s).

(t) The State Department of Health shall issue certificates of need to the owner of a nursing facility in operation at the time of Hurricane Katrina in Hancock County that was not operational on December 31, 2005, because of damage sustained from Hurricane Katrina to authorize the following: (i) the construction of a new nursing facility in Harrison County; (ii) the relocation of forty-nine (49) nursing facility beds from the Hancock County facility to the new Harrison County facility; (iii) the establishment of not more than twenty (20) non-Medicaid nursing facility beds at the Hancock County facility; and (iv) the establishment of not more than twenty (20) non-Medicaid beds at the new Harrison County facility. The certificates of need that authorize the non-Medicaid nursing facility beds under subparagraphs (iii) and (iv) of this paragraph (t) shall be subject to the following conditions: The owner of the Hancock County facility and the new Harrison County facility must agree in writing that no more than fifty (50) of the beds at the Hancock County facility and no more than forty-nine (49) of the beds at the Harrison County facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than fifty (50) patients in the Hancock County facility in any month, or for more than forty-nine (49) patients in the Harrison County facility in any month, or for any patient in either facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the nursing facilities shall be a condition of the issuance of the certificates of need under this paragraph (t), and the agreement shall be fully binding on any later owner or owners of either facility if the ownership of either facility is transferred at any time after the certificates of need are issued. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifty (50) of the beds at the Hancock County facility or more than forty-nine (49) of the beds at the Harrison County facility for participation in the Medicaid program. If the Hancock County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifty (50) patients who are participating in the Medicaid program, or if the Harrison County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than forty-nine (49) patients who are participating in the

Medicaid program, the State Department of Health shall revoke the license of the facility that is in violation of the agreement, at the time that the department determines, after a hearing complying with due process, that the facility has violated the agreement.

(u) The State Department of Health shall issue a certificate of need to a nonprofit venture for the establishment, construction and operation of a skilled nursing facility of not more than sixty (60) beds to provide skilled nursing care for ventilator dependent or otherwise medically dependent pediatric patients who require medical and nursing care or rehabilitation services to be located in a county in which an academic medical center and a children's hospital are located, and for any construction and for the acquisition of equipment related to those beds. The facility shall be authorized to keep such ventilator dependent or otherwise medically dependent pediatric patients beyond age twenty-one (21) in accordance with regulations of the State Board of Health. For purposes of this paragraph (u), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived, and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. The beds authorized by this paragraph shall be counted as pediatric skilled nursing facility beds for health planning purposes under Section 41-7-171 et seq. There shall be no prohibition of or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized by this paragraph.

(3) The State Department of Health may grant approval for and issue certificates of need to any person proposing the new construction of, addition to, conversion of beds of or expansion of any health care facility defined in subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h). The total number of beds which may be authorized by such certificates of need shall not exceed three hundred thirty-four (334) beds for the entire state.

(a) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a privately owned psychiatric residential treatment facility in Simpson County for the conversion of sixteen (16) intermediate care facility for the mentally retarded (ICF-MR) beds to psychiatric residential treatment facility beds, provided that facility agrees in writing that the facility shall give priority for the use of those sixteen (16) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(b) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric residential treatment facility beds in Warren County, not to exceed sixty (60) psychiatric residential treatment facility beds, provided that the facility agrees in writing that no more than thirty (30) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et

seq.) for the use of any patients other than those who are participating only in the Medicaid program of another state, and that no claim will be submitted to the Division of Medicaid for Medicaid reimbursement for more than thirty (30) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program for the use of any patients other than those who are participating only in the Medicaid program of another state. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Mississippi Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

The State Department of Health, on or before July 1, 2002, shall transfer the certificate of need authorized under the authority of this paragraph (b), or reissue the certificate of need if it has expired, to River Region Health System.

(c) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a hospital currently operating Medicaid-certified acute psychiatric beds for adolescents in DeSoto County, for the establishment of a forty-bed psychiatric residential treatment facility in DeSoto County, provided that the hospital agrees in writing (i) that the hospital shall give priority for the use of those forty (40) beds to Mississippi residents who are presently being treated in out-of-state facilities, and (ii) that no more than fifteen (15) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement for more than fifteen (15) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State

Department of Health shall not certify more than fifteen (15) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifteen (15) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

(d) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric treatment facility beds, not to exceed thirty (30) psychiatric residential treatment facility beds, in either Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw, Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah County.

(e) Of the total number of beds authorized under this subsection (3) the department shall issue a certificate of need to a privately owned, nonprofit psychiatric residential treatment facility in Hinds County for an eight-bed expansion of the facility, provided that the facility agrees in writing that the facility shall give priority for the use of those eight (8) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(f) The department shall issue a certificate of need to a one-hundred-thirty-four-bed specialty hospital located on twenty-nine and forty-four one-hundredths (29.44) commercial acres at 5900 Highway 39 North in Meridian (Lauderdale County), Mississippi, for the addition, construction or expansion of child/adolescent psychiatric residential treatment facility beds in Lauderdale County. As a condition of issuance of the certificate of need under this paragraph, the facility shall give priority in admissions to the child/adolescent psychiatric residential treatment facility beds authorized under this paragraph to patients who otherwise would require out-of-state placement. The Division of Medicaid, in conjunction with the Department of Human Services, shall furnish the facility a list of all out-of-state patients on a quarterly basis. Furthermore, notice shall also be provided to the parent, custodial parent or guardian of each out-of-state patient notifying them of the priority status granted by this paragraph. For purposes of this paragraph, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of child/adolescent psychiatric residential treatment facility beds that may be authorized under the authority of this paragraph shall be sixty (60) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this paragraph or for the beds converted pursuant to the authority of that certificate of need.

(4)(a) From and after March 25, 2021, the department may issue a certificate of need to any person for the new construction of any hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the conversion of any other health care facility to a hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person(s) receiving the certificate(s) of need authorized under this paragraph (a) or for the beds converted pursuant to the authority of that certificate of need. In issuing any new certificate of need for any child/adolescent psychiatric or child/adolescent chemical dependency beds, either by new construction or conversion of beds of another category, the department shall give preference to beds which will be located in an area of the state which does not have such beds located in it, and to a location more than sixty-five (65) miles from existing beds. Upon receiving 2020 census data, the department may amend the State Health Plan regarding child/adolescent psychiatric and child/adolescent chemical dependency beds to reflect the need based on new census data.

(i) [Deleted]

(ii) The department may issue a certificate of need for the conversion of existing beds in a county hospital in Choctaw County from acute care beds to child/adolescent chemical dependency beds. For purposes of this subparagraph (ii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(iii) The department may issue a certificate or certificates of need for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in Warren County. For purposes of this subparagraph (iii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

If by January 1, 2002, there has been no significant commencement of construction of the beds authorized under this subparagraph (iii), or no significant action taken to convert existing beds to the beds autho-

rized under this subparagraph, then the certificate of need that was previously issued under this subparagraph shall expire. If the previously issued certificate of need expires, the department may accept applications for issuance of another certificate of need for the beds authorized under this subparagraph, and may issue a certificate of need to authorize the construction, expansion or conversion of the beds authorized under this subparagraph.

(iv) The department shall issue a certificate of need to the Region 7 Mental Health/Retardation Commission for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in any of the counties served by the commission. For purposes of this subparagraph (iv), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(v) The department may issue a certificate of need to any county hospital located in Leflore County for the construction or expansion of adult psychiatric beds or the conversion of other beds to adult psychiatric beds, not to exceed twenty (20) beds, provided that the recipient of the certificate of need agrees in writing that the adult psychiatric beds will not at any time be certified for participation in the Medicaid program and that the hospital will not admit or keep any patients who are participating in the Medicaid program in any of such adult psychiatric beds. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital if the ownership of the hospital is transferred at any time after the issuance of the certificate of need. Agreement that the adult psychiatric beds will not be certified for participation in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (v), and if such hospital at any time after the issuance of the certificate of need, regardless of the ownership of the hospital, has any of such adult psychiatric beds certified for participation in the Medicaid program or admits or keeps any Medicaid patients in such adult psychiatric beds, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital at the time that the department determines, after a hearing complying with due process, that the hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph and in the written agreement by the recipient of the certificate of need.

(vi) The department may issue a certificate or certificates of need for the expansion of child psychiatric beds or the conversion of other beds to

child psychiatric beds at the University of Mississippi Medical Center. For purposes of this subparagraph (vi), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed fifteen (15) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(b) From and after July 1, 1990, no hospital, psychiatric hospital or chemical dependency hospital shall be authorized to add any child/adolescent psychiatric or child/adolescent chemical dependency beds or convert any beds of another category to child/adolescent psychiatric or child/adolescent chemical dependency beds without a certificate of need under the authority of subsection (1)(c) and subsection (4)(a) of this section.

(5) The department may issue a certificate of need to a county hospital in Winston County for the conversion of fifteen (15) acute care beds to geriatric psychiatric care beds.

(6) The State Department of Health shall issue a certificate of need to a Mississippi corporation qualified to manage a long-term care hospital as defined in Section 41-7-173(h)(xii) in Harrison County, not to exceed eighty (80) beds, including any necessary renovation or construction required for licensure and certification, provided that the recipient of the certificate of need agrees in writing that the long-term care hospital will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the long-term care hospital who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the long-term care hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the long-term care hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subsection (6), and if such long-term care hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the long-term care hospital, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subsection and in the written agreement by the recipient of the certificate of need. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(7) The State Department of Health may issue a certificate of need to any hospital in the state to utilize a portion of its beds for the "swing-bed" concept.

Any such hospital must be in conformance with the federal regulations regarding such swing-bed concept at the time it submits its application for a certificate of need to the State Department of Health, except that such hospital may have more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program. Any hospital meeting all federal requirements for participation in the swing-bed program which receives such certificate of need shall render services provided under the swing-bed concept to any patient eligible for Medicare (Title XVIII of the Social Security Act) who is certified by a physician to be in need of such services, and no such hospital shall permit any patient who is eligible for both Medicaid and Medicare or eligible only for Medicaid to stay in the swing beds of the hospital for more than thirty (30) days per admission unless the hospital receives prior approval for such patient from the Division of Medicaid, Office of the Governor. Any hospital having more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program which receives such certificate of need shall develop a procedure to ensure that before a patient is allowed to stay in the swing beds of the hospital, there are no vacant nursing home beds available for that patient located within a fifty-mile radius of the hospital. When any such hospital has a patient staying in the swing beds of the hospital and the hospital receives notice from a nursing home located within such radius that there is a vacant bed available for that patient, the hospital shall transfer the patient to the nursing home within a reasonable time after receipt of the notice. Any hospital which is subject to the requirements of the two (2) preceding sentences of this subsection may be suspended from participation in the swing-bed program for a reasonable period of time by the State Department of Health if the department, after a hearing complying with due process, determines that the hospital has failed to comply with any of those requirements.

(8) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to or expansion of a health care facility as defined in subparagraph (viii) of Section 41-7-173(h), except as hereinafter provided: The department may issue a certificate of need to a nonprofit corporation located in Madison County, Mississippi, for the construction, expansion or conversion of not more than twenty (20) beds in a community living program for developmentally disabled adults in a facility as defined in subparagraph (viii) of Section 41-7-173(h). For purposes of this subsection (8), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this subsection (8).

(9) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the establishment of, or expansion of the currently approved territory of, or the contracting to establish a home

office, subunit or branch office within the space operated as a health care facility as defined in Section 41-7-173(h)(i) through (viii) by a health care facility as defined in subparagraph (ix) of Section 41-7-173(h).

(10) Health care facilities owned and/or operated by the state or its agencies are exempt from the restraints in this section against issuance of a certificate of need if such addition or expansion consists of repairing or renovation necessary to comply with the state licensure law. This exception shall not apply to the new construction of any building by such state facility. This exception shall not apply to any health care facilities owned and/or operated by counties, municipalities, districts, unincorporated areas, other defined persons, or any combination thereof.

(11) The new construction, renovation or expansion of or addition to any health care facility defined in subparagraph (ii) (psychiatric hospital), subparagraph (iv) (skilled nursing facility), subparagraph (vi) (intermediate care facility), subparagraph (viii) (intermediate care facility for the mentally retarded) and subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h) which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, and the addition of new beds or the conversion of beds from one category to another in any such defined health care facility which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(12) The new construction, renovation or expansion of or addition to any veterans homes or domiciliaries for eligible veterans of the State of Mississippi as authorized under Section 35-1-19 shall not require the issuance of a certificate of need, notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(13) The repair or the rebuilding of an existing, operating health care facility that sustained significant damage from a natural disaster that occurred after April 15, 2014, in an area that is proclaimed a disaster area or subject to a state of emergency by the Governor or by the President of the United States shall be exempt from all of the requirements of the Mississippi Certificate of Need Law (Section 41-7-171 et seq.) and any and all rules and regulations promulgated under that law, subject to the following conditions:

(a) The repair or the rebuilding of any such damaged health care facility must be within one (1) mile of the pre-disaster location of the campus of the damaged health care facility, except that any temporary post-disaster health care facility operating location may be within five (5) miles of the pre-disaster location of the damaged health care facility;

(b) The repair or the rebuilding of the damaged health care facility (i) does not increase or change the complement of its bed capacity that it had before the Governor's or the President's proclamation, (ii) does not increase or change its levels and types of health care services that it provided before the Governor's or the President's proclamation, and (iii) does not rebuild in a different county; however, this paragraph does not restrict or prevent a

health care facility from decreasing its bed capacity that it had before the Governor's or the President's proclamation, or from decreasing the levels of or decreasing or eliminating the types of health care services that it provided before the Governor's or the President's proclamation, when the damaged health care facility is repaired or rebuilt;

(c) The exemption from Certificate of Need Law provided under this subsection (13) is valid for only five (5) years from the date of the Governor's or the President's proclamation. If actual construction has not begun within that five-year period, the exemption provided under this subsection is inapplicable; and

(d) The Division of Health Facilities Licensure and Certification of the State Department of Health shall provide the same oversight for the repair or the rebuilding of the damaged health care facility that it provides to all health care facility construction projects in the state.

For the purposes of this subsection (13), "significant damage" to a health care facility means damage to the health care facility requiring an expenditure of at least One Million Dollars ($1,000,000.00).

(14) The State Department of Health shall issue a certificate of need to any hospital which is currently licensed for two hundred fifty (250) or more acute care beds and is located in any general hospital service area not having a comprehensive cancer center, for the establishment and equipping of such a center which provides facilities and services for outpatient radiation oncology therapy, outpatient medical oncology therapy, and appropriate support services including the provision of radiation therapy services. The provisions of Section 41-7-193(1) regarding substantial compliance with the projection of need as reported in the current State Health Plan are waived for the purpose of this subsection.

(15) The State Department of Health may authorize the transfer of hospital beds, not to exceed sixty (60) beds, from the North Panola Community Hospital to the South Panola Community Hospital. The authorization for the transfer of those beds shall be exempt from the certificate of need review process.

(16) The State Department of Health shall issue any certificates of need necessary for Mississippi State University and a public or private health care provider to jointly acquire and operate a linear accelerator and a magnetic resonance imaging unit. Those certificates of need shall cover all capital expenditures related to the project between Mississippi State University and the health care provider, including, but not limited to, the acquisition of the linear accelerator, the magnetic resonance imaging unit and other radiological modalities; the offering of linear accelerator and magnetic resonance imaging services; and the cost of construction of facilities in which to locate these services. The linear accelerator and the magnetic resonance imaging unit shall be (a) located in the City of Starkville, Oktibbeha County, Mississippi; (b) operated jointly by Mississippi State University and the public or private health care provider selected by Mississippi State University through a request for proposals (RFP) process in which Mississippi State University

selects, and the Board of Trustees of State Institutions of Higher Learning approves, the health care provider that makes the best overall proposal; (c) available to Mississippi State University for research purposes two-thirds (2/3) of the time that the linear accelerator and magnetic resonance imaging unit are operational; and (d) available to the public or private health care provider selected by Mississippi State University and approved by the Board of Trustees of State Institutions of Higher Learning one-third (1/3) of the time for clinical, diagnostic and treatment purposes. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(17) The State Department of Health shall issue a certificate of need for the construction of an acute care hospital in Kemper County, not to exceed twenty-five (25) beds, which shall be named the "John C. Stennis Memorial Hospital." In issuing the certificate of need under this subsection, the department shall give priority to a hospital located in Lauderdale County that has two hundred fifteen (215) beds. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person or entity receiving the certificate of need authorized under this subsection or for the beds constructed under the authority of that certificate of need.

(18) The planning, design, construction, renovation, addition, furnishing and equipping of a clinical research unit at any health care facility defined in Section 41-7-173(h) that is under the direction and control of the University of Mississippi Medical Center and located in Jackson, Mississippi, and the addition of new beds or the conversion of beds from one (1) category to another in any such clinical research unit, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(19) [Repealed]

(20) Nothing in this section or in any other provision of Section 41-7-171 et seq. shall prevent any nursing facility from designating an appropriate number of existing beds in the facility as beds for providing care exclusively to patients with Alzheimer's disease.

(21) Nothing in this section or any other provision of Section 41-7-171 et seq. shall prevent any health care facility from the new construction, renovation, conversion or expansion of new beds in the facility designated as intensive care units, negative pressure rooms, or isolation rooms pursuant to the provisions of Sections 41-14-1 through 41-14-11. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived.

HISTORY: Laws, 1979, ch. 451, §§ 9, 27; Laws, 1980, ch. 493, § 5; Laws, 1981, ch. 484, § 14; Laws, 1982, ch. 499, § 1; Laws, 1983, ch. 484, § 5; Laws, 1984, ch. 505; Laws, 1985, ch. 534, § 8; Laws, 1986, ch. 437, § 40; Laws, 1987, ch. 515, § 6; Laws, 1988, ch. 421, § 1; Laws, 1989, ch. 530, § 2; Laws, 1990, ch. 510, § 2; Laws, 1993, ch. 426, § 10; Laws, 1993, ch. 493, § 1; Laws, 1993, ch. 609, § 10; Laws, 1994, ch. 649, § 16; Laws, 1995, ch. 599, § 1; Laws, 1996, ch. 551, § 1; Laws, 1998, ch. 596, § 1; Laws, 1999, ch. 303, § 1; Laws, 1999, ch. 495, § 2; Laws, 1999, ch. 583, § 2; Laws, 2001, ch. 342, § 1; Laws, 2001, ch. 607, § 1; Laws, 2002, ch. 636B, § 6; Laws, 2003, ch. 393, § 2; Laws, 2004, ch. 438, § 1; Laws, 2006, ch. 513, § 1; Laws, 2007, ch. 514, § 21; Laws, 2012, ch. 524, § 14; Laws, 2015, ch. 491, § 1, eff from and after passage; Laws, 2020, ch. 500, § 9 (became law without the Governor's signature on October 9, 2020); Laws, 2021, ch. 399, § 12, eff from and after passage (approved March 25, 2021).

Joint Legislative Committee Notes — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the fourth sentence of subsection (7) by substituting "procedure to ensure" for "procedure to insure." The Joint Committee ratified the corrections at its August 20, 2021, meeting.

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

Amendment Notes — The 2020 amendment, effective October 9, 2020, added (21).

The 2021 amendment, effective March 25, 2021, in (4)(a), substituted "March 25, 2021" for "July 1, 1993" and "may issue" for "shall not issue," deleted "or for the addition of any child/adolescent psychiatric or child/adolescent chemical dependency beds in any hospital, psychiatric hospital or chemical dependency hospital, or for the conversion of any beds of another category in any hospital, psychiatric hospital or chemical dependency hospital to child/adolescent psychiatric or child/adolescent chemical dependency beds, except as hereinafter authorized" in the first sentence, and added the last three sentences; deleted former (4)(a)(i), which prevented the issuance of certificates of need to hospitals, psychiatric hospitals or chemical dependency hospitals that were participating in the Medicaid program; and in (4)(b), inserted "and subsection (4)(a)."

OPINIONS OF THE ATTORNEY GENERAL

Offices of private physicians and dentists in which ambulatory surgical services are provided are not health care facilities and are therefore not subject to certificate of need review. Thompson, March 22, 1994, A.G. Op. #93-0924.

An office that is a large, all encompassing, multi-speciality ambulatory surgical facility, is not a private office as intended by the Section 41-7-173. Moreover, a facility is a health care facility inasmuch as it would provide institutional health services. Accordingly, such a facility would not be exempt from the certificate of need requirements set forth in section 41-7-191(1)(d)(xi), despite the fact that it is owned by a physicians' group. Thompson, January 9, 1996, A.G. Op. #95-0802.

The establishment of and certification of a peritoneal dialysis facility for Medicare purposes by the Mississippi State Department of Health is the establishment of a health care facility and, as such, requires a certificate of need under the Certificate of Need Law of 1979. Thompson, February 9, 1999, A.G. Op. #99-0808.

The establishment of a Distinct Part, PPS-excluded acute rehabilitation unit in an existing hospital, without the addition of any licensed beds and when the beds at issue will remain licensed as acute care beds and only the Medicare reimburse-

ment schedule will change, is a project that requires certificate of need review and approval if the unit is either (1) a new health care facility, or (2) proposes to offer a new health service which was not previously offered by the hospital. Thompson, July 2, 1999, A.G. Op. #99-0309.

Subsection (2)(q)(vi) is properly interpreted by the Department of Health to be essentially a "tie-breaker" between two equally qualified applications. Brand, June 14, 2002, A.G. Op. #02-0302.

The 2004 amendment to 41-7-191(16) is clearly a mandate to the department of health to grant the necessary certification of need (CON), without requiring the applicant to demonstrate compliance with any CON criteria or specifications. Amy, Sept. 16, 2005, A.G. Op. 05-0452.

The 2006 amendment of Section 41-7-191 plainly requires a certificate of need for the reopening of any health care facility after it has been closed for more than 60 months. Amy, July 10, 2006, A.G. Op. 06-0261.

Since the legislature did not define the term, it is within the Department of Health's discretion and authority to determine and set by regulation what constitutes the "reopening" and "operation" of a health care facility for purposes of Section 41-7-191 – whether it means actually housing patients/residents, or something short of this. Amy, July 10, 2006, A.G. Op. 06-0261.

Vendors who, in good faith, provided goods or services, in situations when through no fault of the vendor, the governing authorities made an error in the manner the purchasing laws were followed, are authorized by Section 31-7-57 to bring an original cause of action, as the claim is based on a contractual obligation. It would not be appropriately handled as an appeal pursuant to Section 21-39-11. Dye, July 10, 2006, A.G. Op. 06-0267.

§ 41-7-193. Certificate of need; new institutional health services and other projects.

JUDICIAL DECISIONS

1. In general.

Chancery court properly affirmed the decision of the Mississippi State Department of Health to grant a free-standing imaging center's application for a Certificate of Need for magnetic resonance imaging (MRI) services because the center substantially complied with the projection of need as reported in the state health plan in effect at the time; the center's physician-affidavit projections were based on actual MRI referrals during the year. Baptist Mem. Hospital-North-Mississippi v. State Dep't of Health, 270 So. 3d 1134, 2018 Miss. App. LEXIS 530 (Miss. Ct. App. 2018).

Substantial evidence supported the decision of the Mississippi State Department of Health to grant a free-standing imaging center's application for a Certificate of Need for magnetic resonance imaging services because the center presented evidence that it would meet the need criterion through a population-based, market-share analysis; the center also demonstrated that its proposal met the need criterion through physician-affidavits and population-based statistical projections. Baptist Mem. Hospital-North-Mississippi v. State Dep't of Health, 270 So. 3d 1134, 2018 Miss. App. LEXIS 530 (Miss. Ct. App. 2018).

Substantial evidence supported the decision of the Mississippi State Department of Health to grant a free-standing imaging center's application for a Certificate of Need for magnetic resonance imaging services (MRI) because the proposed new services would not reduce the utilization of existing providers in the service area; a health planning expert testified that there was sufficient volume of needed MRIs in the service area to meet the center's projection. Baptist Mem. Hospital-North-Mississippi v. State Dep't of Health, 270 So. 3d 1134, 2018 Miss. App. LEXIS 530 (Miss. Ct. App. 2018).

Substantial evidence supported the decision of the Mississippi State Department of Health to grant a free-standing imaging center's application for a Certificate of Need (CON) for magnetic reso-

nance imaging services (MRI) because the center's project was economically viable per the CON review criterion; the physician affidavits constituted substantial evidence, and the center's financial expert testified that the project would be economically viable with positive income and cash flow. Baptist Mem. Hospital-North-Mississippi v. State Dep't of Health, 270 So. 3d 1134, 2018 Miss. App. LEXIS 530 (Miss. Ct. App. 2018).

§ 41-7-197. Certificate of need; hearing before hearing officer; review.

OPINIONS OF THE ATTORNEY GENERAL

The duties of the State Health Officer in making decisions regarding certificates of need are mandatory. No provision can be found for the State Health Officer to recuse himself from those duties or to delegate them to some other person. Amy, Feb. 13, 2004, A.G. Op. 03-0638.

§ 41-7-201. Appeal of final order pertaining to certificate of need for home health agency or health care facility.

(1) The provisions of this subsection (1) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for a home health agency, as defined in Section 41-7-173(h)(ix):

(a) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within thirty (30) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the thirty (30) days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of. Any person whose rights may be materially affected by the action of the State Department of Health may appear and become a party or the court may, upon motion, order that any such person, organization or entity be joined as a necessary party.

(b) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days or within such additional time as the court may by order for cause allow from the service of such notice, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State

Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

(c) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of, in whole or in part, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

(ii) The Supreme Court has entered a final order affirming the chancery court.

(d) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

(2) The provisions of this subsection (2) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health care facility as defined in Section 41-7-173(h), with the exception of any home health agency as defined in Section 41-7-173(h)(ix):

(a) There shall be a "stay of proceedings" of any final order issued by the State Department of Health pertaining to the issuance of a certificate of need for the establishment, construction, expansion or replacement of a health care facility for a period of thirty (30) days from the date of the order, if an existing provider located in the same service area where the health care facility is or will be located has requested a hearing during the course of review in opposition to the issuance of the certificate of need. The stay of proceedings shall expire at the termination of thirty (30) days; however, no construction, renovation or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued by the licensing agency, and no certification to participate in the Title XVII or Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for such appeals has expired. Notwithstanding the foregoing, the filing of an appeal from a final order of the State Department of Health or the chancery court for the issuance of a certificate of need shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in a certificate of need issued by the State Department of Health.

(b) In addition to other remedies now available at law or in equity, any party aggrieved by such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within twenty (20) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the twenty (20) days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of.

(c) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days of the date of the filing of the appeal, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal. The chancery court shall give preference to any such appeal from a final order by the State Department of Health in a certificate of need proceeding, and shall render a final order regarding such appeal no later than one hundred twenty (120) days from the date of the final order by the State Department of Health. If the chancery court has not rendered a final order within this one-hundred-twenty-day period, then the final order of the State Department of Health shall be deemed to have been affirmed by the chancery court, and any party to the appeal shall have the right to appeal from the chancery court to the Supreme Court on the record certified by the State Department of Health as otherwise provided in paragraph (g) of this subsection. In the event the chancery court has not rendered a final order within the one-hundred-twenty-day period and an appeal is made to the Supreme Court as provided herein, the Supreme Court shall remand the case to the chancery court to make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the Supreme Court affirm the order of the State Department of Health.

(d) Any appeal of a final order by the State Department of Health in a certificate of need proceeding shall require the giving of a bond by the appellant(s) sufficient to secure the appellee against the loss of costs, fees, expenses and attorney's fees incurred in defense of the appeal, approved by the chancery court within five (5) days of the date of filing the appeal.

(e) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record certified to the court.

(f) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of in

whole or in part and may make an award of costs, fees, expenses and attorney's fees, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The court, as part of the final order, shall make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the court affirm the order of the State Department of Health. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

(ii) The Supreme Court has entered a final order affirming the chancery court.

(g) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court. The Supreme Court must give preference and conduct an expedited judicial review of an appeal of a final order of the chancery court relating to a certificate of need proceeding and must render a final order regarding the appeal no later than one hundred twenty (120) days from the date the final order by the chancery court is certified to the Supreme Court. The Supreme Court shall consider such appeals in an expeditious manner without regard to position on the court docket.

(h) Within thirty (30) days from the date of a final order by the Supreme Court or a final order of the chancery court not appealed to the Supreme Court that modifies or wholly or partly vacates the final order of the State Department of Health granting a certificate of need, the State Department of Health shall issue another order in conformity with the final order of the Supreme Court, or the final order of the chancery court not appealed to the Supreme Court.

HISTORY: Laws, 1979, ch. 451, § 16; Laws, 1983, ch. 484, § 8; Laws, 1985, ch. 534, § 11; Laws, 1986, ch. 437, § 44; Laws, 1992, ch. 512 § 1; Laws, 1999, ch. 583, § 3; Laws, 2011, ch. 540, § 1; Laws, 2016, ch. 412, § 4, eff from and after July 1, 2016; Laws, 2019, ch. 367, § 1, eff from and after July 1, 2019.

Editor's Notes — This section, as amended by Section 1 of Chapter 540, Laws of 2011, effective from and after July 1, 2011, was held unconstitutional by the Mississippi Supreme Court in *Dialysis Solutions, LLC v. Miss. State Dep't of Health*, 96 So. 3d 713 (Miss. 2012). The section was subsequently amended by Section 4 of Chapter 412, Laws of 2016, to revise the procedures for judicial appeals of final orders pertaining to home

health agencies or health care facilities, reinstating the appeal procedure that was in the section before it was revised in 2011.

Amendment Notes — The 2019 amendment added the last two sentences of (2)(g).

JUDICIAL DECISIONS

1. In general.

Because a limited liability company fell squarely into the exception to the health care facility classification as defined by Miss. Code Ann. § 41-7-173(h), the appeal statute, Miss. Code Ann. § 41-7-201(2)(a-h), did not apply to the case or to any appeal pertaining to the granting or denying of a certificate of need to the private practice of physicians; the non-applicability of the statute further meant that the statutory affirmance of the Department of Health's order never occurred. Vicksburg Healthcare, LLC v. Miss. State Dep't of Health & Wound Care Mgmt., 292 So. 3d 223, 2020 Miss. LEXIS 76 (Miss. 2020).

Plain language of subsection (2) does not govern the appeal process pertaining to private physician clinics; accordingly, it does not grant jurisdiction for a review of the determinations of the Mississippi State Department of Health pertaining to the granting or denying of a certificate of need to the private practice of physicians. Vicksburg Healthcare, LLC v. Miss. State Dep't of Health & Wound Care Mgmt., 292 So. 3d 223, 2020 Miss. LEXIS 76 (Miss. 2020).

CHAPTER 9.

REGULATION OF HOSPITALS; HOSPITAL RECORDS

REGULATION OF HOSPITALS

§ 41-9-3. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

Inasmuch as county health departments do not provide care to bed patients, it appears that county health departments are not "hospitals" as defined in Section 41-9-3. Since county health departments are not hospitals, records in the possession of county health departments are not hospital records. Thompson, October 18, 1995, A.G. Op. #95-0674.

§ 41-9-9. Application for license.

HISTORY: Codes, 1942, § 7146.5-04; Laws, 1948, ch. 398, § 4; Laws, 1984, ch. 315, § 1; Laws, 1986, ch. 500, § 23; Laws, 1998, ch. 433, § 1; Laws, 2016, ch. 510, § 5, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 5, eff from and after July 1, 2020.

Editor's Notes — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

This section was reenacted without change by Laws of 2020, ch. 473, § 5. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

HOSPITAL RECORDS — PREPARATION, PRESERVATION AND DESTRUCTION

§ 41-9-68. Certain hospital records exempt from requirement of public access.

OPINIONS OF THE ATTORNEY GENERAL

Whether county emergency medical service records, including health conditions of persons injured in an accident, constituted exempt "hospital records" under Section 41-9-68 or were otherwise privileged under Section 13-1-21 is a factual question. Lamar, Dec. 16, 2005, A.G. Op. 05-0595.

§ 41-9-69. Period of retention of hospital records.

OPINIONS OF THE ATTORNEY GENERAL

Because in-house treatment is provided by some regional health centers, such centers must fulfill statutory record retention requirements dealing with hospital records. Oakes, May 21, 1992, A.G. Op. #92-0257.

Section 41-9-69 does not regulate the retention of records by county health departments. Section 25-59-21 would govern the retention and destruction of these records. Thompson, October 18, 1995, A.G. Op. #95-0674.

HOSPITAL RECORDS — USE IN TRIALS AND ADMINISTRATIVE HEARINGS

§ 41-9-119. Evidence of reasonableness of medical expenses.

JUDICIAL DECISIONS

1. In general.

Trial court did not error in a medical malpractice action by allowing a patient to admit the medical bill from a hospital into evidence because the patient testified at trial and submitted into evidence the hospital bill and testified that the bill was incurred as a result of the injuries complained of in the action. Therefore, such proof constituted prima facie evidence that the patient's medical bill was necessary and reasonable. Kronfol v. Johnson, 283 So. 3d 1162, 2019 Miss. App. LEXIS 183 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 459 (Miss. 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 430 (Miss. 2019).

CHAPTER 13.
COMMUNITY HOSPITALS

IN GENERAL

Sec.

§ 41-13-10. Definitions.

For purposes of Sections 41-13-10 through 41-13-47, the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Administrator" shall mean the chief administrative official and executive officer of a community hospital selected by the board of trustees of such community hospital.

(b) "Board of trustees" shall mean the board appointed pursuant to Section 41-13-29, to operate a community hospital.

(c) "Community hospital" shall mean any hospital, nursing home and/or related health facilities or programs, including, without limitation, ambulatory surgical facilities, intermediate care facilities, after-hours clinics, home health agencies and rehabilitation facilities, established and acquired by boards of trustees or by one or more owners which is governed, operated and maintained by a board of trustees.

(d) "Owner" shall mean any board of supervisors of any county having an ownership interest in any community hospital or leased facility on behalf of the county or on behalf of any supervisors district, judicial district or election district of the county and shall also mean any governing council or board of any municipality having an ownership interest in any community hospital or leased facility.

(e) "Leased facility" shall mean a hospital, nursing home or related health facilities which an owner has leased to an individual, partnership, corporation, other owner or board of trustees for a term not in excess of fifty (50) years, conditioned upon the facility continuing to operate on a nonprofit basis. A leased facility shall not be deemed or considered to be a community hospital except for purposes of Sections 41-13-19 through 41-13-25, and shall not be subject to the statutory requirements placed on community hospitals except to the extent as may be specifically required by the terms of the applicable lease agreement. However, in situations where another community hospital, acting through its board of trustees, is the lessee of a leased facility, the leased facility shall remain subject to this chapter and other laws

applicable to community hospitals, except that the owners of the lessee shall have sole authority to appoint the board of trustees for the leased facility, which shall be the same board of trustees as appointed under Section 41-13-29 for the lessee community hospital.

(f) "Service area" means that area in which a community hospital may provide services and perform the activities in Section 41-13-35(5), as determined by a board of trustees by its patient origin studies, and may include areas outside of the State of Mississippi.

HISTORY: Laws, 1985, ch. 511, § 2; Laws, 2002, ch. 441, § 1, eff from and after July 1, 2002; Laws, 2019, ch. 442, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote (f), which read: " 'Service area' means that area as determined by a board of trustees by its patient origin studies."

OPINIONS OF THE ATTORNEY GENERAL

Hospital is "leased facility" under Miss. Code Section 41-13-10(e), and is not to be deemed or considered as community hospital except for purposes of Miss. Code Sections 41-13-19 through 41-13-25; hospital is not, therefore, community hospital for purposes of 1993 amendment to Miss. Code Section 41-13-10. Barnett, May 28, 1993, A.G. Op. #93-0406.

If board of trustees had established or acquired nursing home prior to closing of hospital, and nursing home was existent when hospital was closed, then board of trustees of hospital would have continued to exist since "community hospital" as defined by 41-13-10(c) had never ceased to exist. Shuler, March 30, 1994, A.G. Op. #93-0976.

Section 41-13-35(5)(n) authorizes the Board of Trustees of a community hospital to enter into contracts with an insurance reciprocal established pursuant to and operated in accordance with Section 41-13-10 et seq. Evans, August 25, 1995, A.G. Op. #95-0542.

Community hospitals are governmental entities and are not subject to local privilege taxes. Exum-Petty, June 5, 1998, A.G. Op. #98-0323.

A board of supervisors owning a community hospital within the meaning of this section must, if it elects to lease the community hospital without an option to sell, solicit bids therefor by advertisement. Huff, August 7, 1998, A.G. Op. #98-0439.

A county board of supervisors could approve the assignment of a hospital lease from a nonprofit corporation to a for-profit corporation without being subject to the statute as the hospital was operated by a private, nonprofit corporation and was clearly a "leased facility" within the meaning of subsection (e) of this section. Haque, February 19, 1999, A.G. Op. #99-0082.

Certificates of need, licenses and permits, which empower community hospitals to exist and provide various medical services, are necessarily owned by the owners of the community hospital, but are managed and operated by the board of trustees thereof; thus, applications for new certificates of need by an existing community hospital are effectively in the name of the owner but must be made by its board of trustees. Broussard, March 29, 2000, A.G. Op. #2000-0156.

A community hospital may not exceed the bounds of its service area and, therefore, a county, as the owner of a community hospital, does not have authority to effect the transfer, under the guise of a lease, of a community hospital's assets, including licenses and licensed beds, to a for-profit corporation which will then use those licenses and licensed beds to open an existing, non-licensed hospital facility owned by it in another county not shown to be in its service area. Moody, May 24, 2002, A.G. Op. #02-0273.

A community hospital may not exceed the bounds of its service area. Banks, June 27, 2002, A.G. Op. #02-0371.

Where a community hospital is jointly owned by a city and county, any action

which must be exercised by the "owner" of the hospital must be exercised by both the city and the county. Mitchell, Mar. 5, 2004, A.G. Op. 04-0305.

A county does not have the authority to transfer funds from the nursing home to the county general fund or other funds owed and operated by the county. Dobbins, July 30, 2004, A.G. Op. 04-0270.

Where a building owned by the county for use by a hospital was damaged by fire, the county might, but was not required to, reimburse the hospital for expenses incurred in repairing damage to the hospital buildings resulting from fire. Hemphill, Apr. 26, 2005, A.G. Op. 05-0120.

A physician-clinic would be considered a "community hospital" for purposes of Section 41-13-10. Donnell, July 22, 2005, A.G. Op. 05-0304.

A separate non-profit corporation or limited liability company formed by a community hospital would not fall within the meaning of "community hospital" as set out in Section 41-13-10(c). Williamson, Apr. 7, 2006, A.G. Op. 06-0040.

§ 41-13-11. Community hospital liability and insurance.

OPINIONS OF THE ATTORNEY GENERAL

Section 41-13-11 does not preclude the hospital Board of Trustees from honoring its indemnification obligations simply because the indemnitee has procured insurance in his defense. Nichols, July 25, 1995, A.G. Op. #95-0259.

§ 41-13-15. Community hospitals and health facilities in counties and municipalities.

(1) Any county and/or any political or judicial subdivision of a county and/or any municipality of the State of Mississippi, acting individually or jointly, may acquire and hold real estate for a community hospital either recognized and/or licensed as such by either the State of Mississippi or the United States Government, and may, after complying with applicable health planning and licensure statutes, construct a community hospital thereon and/or appropriate funds according to the provisions of this chapter for the construction, remodeling, maintaining, equipping, furnishing and expansion of such facilities by the board of trustees upon such real estate.

(2) Where joint ownership of a community hospital is involved, the owners are hereby authorized to contract with each other for determining the pro rata ownership of such community hospital, the proportionate cost of maintenance and operation, and the proportionate financing that each will contribute to the community hospital.

(3) The owners may likewise contract with each other, or on behalf of any subordinate political or judicial subdivision, or with the board of trustees of a community hospital, and/or any agency of the State of Mississippi or the United States Government, for necessary purposes related to the establishment, operation or maintenance of community hospitals and related programs wherever located, and may either accept from, sell or contribute to the other entities, monies, personal property or existing health facilities. The owners or the board of trustees may also receive monies, property or any other valuables of any kind through gifts, donations, devises or other recognized means from any source for the purpose of hospital use.

(4) Owners and boards of trustees, acting jointly or severally, may acquire

and hold real estate for offices for physicians and other health care practitioners and related health care or support facilities, provided that any contract for the purchase of real property must be ratified by the owner, and may thereon construct and equip, maintain and remodel or expand such offices and related facilities, and the board of trustees may lease same to members of the hospital staff or others at a rate deemed to be in the best interest of the community hospital.

(5) If any political or judicial subdivision of a county is obligated hereunder, the boundaries of such district shall not be altered in such a manner as to relieve any portion thereof of its obligation hereunder.

(6) Owners may convey to any other owner any or all property, real or personal, comprising any existing community hospital, including related facilities, wherever located, owned by such conveying owner. Such conveyance shall be upon such terms and conditions as may be agreed upon and may make such provisions for transfers of operating funds and/or for the assumption of liabilities of the community hospital as may be deemed appropriate by the respective owners.

(7)(a) Except as provided for in subsection (11) of this section, owners may lease all or part of the property, real or personal, comprising a community hospital, including any related facilities, wherever located, and/or assets of such community hospital, to any individual, partnership or corporation, whether operating on a nonprofit basis or on a profit basis, or to the board of trustees of such community hospital or any other owner or board of trustees, subject to the applicable provisions of subsections (8), (9) and (10) of this section. The term of such lease shall not exceed fifty (50) years. Such lease shall be conditioned upon (i) the leased facility continuing to operate in a manner safeguarding community health interests; (ii) the proceeds from the lease being first applied against such bonds, notes or other evidence of indebtedness as are issued pursuant to Section 41-13-19 as and when they are due, provided that the terms of the lease shall cover any indebtedness pursuant to Section 41-13-19; and (iii) any surplus proceeds from the lease being deposited in the general fund of the owner, which proceeds may be used for any lawful purpose. Such lease shall be subject to the express approval of the board of trustees of the community hospital, except in the case where the board of trustees of the community hospital will be the lessee. However, owners may not lease any community hospital to the University of Mississippi Medical Center unless first the University of Mississippi Medical Center has obtained authority to lease such hospital under specific terms and conditions from the Board of Trustees of State Institutions of Higher Learning.

If the owner wishes to lease a community hospital without an option to sell it and the approval of the board of trustees of the community hospital is required but is not given within thirty (30) days of the request for its approval by the owner, then the owner may enter such lease as described herein on the following conditions: A resolution by the owner describing its intention to enter such lease shall be published once a week for at least three

(3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the lease of the community hospital and the last publication shall be made not more than seven (7) days prior to such date. If, on or prior to the date fixed in such resolution for the lease of the community hospital, there shall be filed with the clerk of the owner a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of such owner, requesting that an election be called and held on the question of the lease of the community hospital, then it shall be the duty of the owner to call and provide for the holding of an election as petitioned for. In such case, no such lease shall be entered into unless authorized by the affirmative vote of the majority of the qualified voters of such owner who vote on the proposition at such election. Notice of such election shall be given by publication in like manner as hereinabove provided for the publication of the initial resolution. Such election shall be conducted and the return thereof made, canvassed and declared as nearly as may be in like manner as is now or may hereafter be provided by law in the case of general elections in such owner. If, on or prior to the date fixed in the owner's resolution for the lease of the community hospital, no such petition as described above is filed with the clerk of the owner, then the owner may proceed with the lease subject to the other requirements of this section. Subject to the above conditions, the lease agreement shall be upon such terms and conditions as may be agreed upon and may make such provision for transfers of tangible and intangible personal property and operating funds and/or for the assumption of liabilities of the community hospital and for such lease payments, all as may be deemed appropriate by the owners.

(b) Owners may sell and convey all or part of the property, real or personal, comprising a community hospital, including any related facilities, wherever located, and/or assets of such community hospital, to any individual, partnership or corporation, whether operating on a nonprofit basis or on a profit basis, or to the board of trustees of such community hospital or any other owner or board of trustees, subject to the applicable provisions of subsections (8) and (10) of this section. Such sale and conveyance shall be upon such terms and conditions as may be agreed upon by the owner and the purchaser that are consistent with the requirements of this section, and the parties may make such provisions for the transfer of operating funds or for the assumption of liabilities of the facility, or both, as they deem appropriate. However, such sale and conveyance shall be conditioned upon (i) the facility continuing to operate in a manner safeguarding community health interests; (ii) the proceeds from such sale being first applied against such bonds, notes or other evidence of indebtedness as are issued pursuant to Section 41-13-19 as and when they are due, provided that the terms of the sale shall cover any indebtedness pursuant to Section 41-13-19; and (iii) any surplus proceeds from the sale being deposited in the general fund of the owner, which

proceeds may be used for any lawful purpose. However, owners may not sell or convey any community hospital to the University of Mississippi Medical Center unless first the University of Mississippi Medical Center has obtained authority to purchase such hospital under specific terms and conditions from the Board of Trustees of State Institutions of Higher Learning.

(8) Whenever any owner decides that it may be in its best interests to sell or lease a community hospital as provided for under subsection (7) of this section, the owner shall first contract with a certified public accounting firm, a law firm or competent professional health care or management consultants to review the current operating condition of the community hospital. The review shall consist of, at minimum, the following:

(a) A review of the community's inpatient facility needs based on current workload, historical trends and projections, based on demographic data, of future needs.

(b) A review of the competitive market for services, including other hospitals which serve the same area, the services provided and the market perception of the competitive hospitals.

(c) A review of the hospital's strengths relative to the competition and its capacity to compete in light of projected trends and competition.

(d) An analysis of the hospital's options, including service mix and pricing strategies. If the study concludes that a sale or lease should occur, the study shall include an analysis of which option would be best for the community and how much revenues should be derived from the lease or sale.

(9) After the review and analysis under subsection (8) of this section, an owner may choose to sell or lease the community hospital. If an owner chooses to sell such hospital or lease the hospital with an option to sell it, the owner shall follow the procedure specified in subsection (10) of this section. If an owner chooses to lease the hospital without an option to sell it, it shall first spread upon its minutes why such a lease is in the best interests of the persons living in the area served by the facility to be leased, and it shall make public any and all findings and recommendations made in the review required under proposals for the lease, which shall state clearly the minimum required terms of all respondents and the evaluation process that will be used when the owner reviews the proposals. The owner shall lease to the respondent submitting the highest and best proposal. In no case may the owner deviate from the process provided for in the request for proposals.

(10) If an owner wishes to sell such community hospital or lease the hospital with an option to sell it, the owner first shall conduct a public hearing on the issue of the proposed sale or lease with an option to sell the hospital. Notice of the date, time, location and purpose of the public hearing shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date of the public hearing and the last publication shall be made not more than seven (7) days before that date. If there is filed with the clerk of the

owner not more than twenty-one (21) days after the date of the public hearing, a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of the owner, requesting that an election be called and held on the question of whether the owner should proceed with the process of seeking proposals for the sale or lease with an option to sell the hospital, then it shall be the duty of the owner to call and provide for the holding of an election as petitioned for. Notice of the election shall be given by publication in the same manner as provided for the publication of the notice of the public hearing. The election shall be conducted and the return thereof made, canvassed and declared in the same manner as provided by law in the case of general elections in the owner. If less than a majority of the qualified voters of the owner who vote on the proposition at such election vote in favor of the owner proceeding with the process of seeking proposals for the sale or lease with an option to sell the hospital, then the owner is not authorized to sell or lease the hospital. If a majority of the qualified voters of the owner who vote on the proposition at such election vote in favor of the owner proceeding with the process of seeking proposals for the sale or lease with an option to sell the hospital, then the owner may seek proposals for the sale or lease of the hospital. If no such petition is timely filed with the clerk of the owner, then the owner may proceed with the process of seeking proposals for the sale or lease with an option to sell the hospital. The owner shall adopt a resolution describing its intention to sell or lease with an option to sell the hospital, which shall include the owner's reasons why such a sale or lease is in the best interests of the persons living in the area served by the facility to be sold or leased. The owner then shall publish a copy of the resolution; the requirements for proposals for the sale or lease with an option to sell the hospital, which shall state clearly the minimum required terms of all respondents and the evaluation process that will be used when the owner reviews the proposals; and the date proposed by the owner for the sale or lease with an option to sell the hospital. Such publication shall be made once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date proposed for the sale or lease with an option to sell the hospital and the last publication shall be made not more than seven (7) days before that date. After receiving proposals, such sale or lease shall be made to the respondent submitting the highest and best proposal. In no case may the owner deviate from the process provided for in the request for proposals.

(11) A lessee of a community hospital, under a lease entered into under the authority of Section 41-13-15, in effect prior to July 15, 1993, or an affiliate thereof, may extend or renew such lease whether or not an option to renew or extend the lease is contained in the lease, for a term not to exceed fifteen (15) years, conditioned upon (a) the leased facility continuing to operate in a manner safeguarding community health interest; (b) proceeds from the lease being first applied against such bonds, notes or other evidence of indebtedness

as are issued pursuant to Section 41-13-19; (c) surplus proceeds from the lease being used for health related purposes; (d) subject to the express approval of the board of trustees of the community hospital; and (e) subject to the express approval of the owner. If no board of trustees is then existing, the owner shall have the right to enter into a lease upon such terms and conditions as agreed upon by the parties. Any lease entered into under this subsection (11) may contain an option to purchase the hospital, on such terms as the parties shall agree.

HISTORY: Codes, 1942, § 7129-50; Laws, 1944, ch. 277, § 1; Laws, 1946, ch. 412, § 1; Laws, 1948, ch. 435, § 1; Laws, 1954, ch. 294, § 1; Laws, 1958, ch. 356; Laws, 1960, ch. 353; Laws, 1962, ch. 401; Laws, 1966, ch. 461, § 1; Laws, 1968, ch. 442, § 1; Laws, 1972, ch. 321, § 1; ch. 494, § 1; Laws, 1973, ch. 442, § 1; Laws, 1974, ch. 487; Laws, 1977, ch. 389; Laws, 1979, ch. 463; Laws, 1982, ch. 395, § 1; Laws, 1985, ch. 511, § 4; Laws, 1987, ch. 494; Laws, 1988, ch. 387; Laws, 1989, ch. 426, § 1; Laws, 1990, ch. 383, § 1; Laws, 1992, ch. 551 § 1; Laws, 1993, ch. 535, § 1; Laws, 1994, ch. 546, § 1, eff from and after July 1, 1994; Laws, 2019, ch. 442, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (10), rewrote the fourth sentence, which read: "If, after the public hearing, the owner chooses to sell or lease with an option to sell the hospital, the owner shall adopt a resolution describing its intention to sell or lease with an option to sell the hospital, which shall include the owner's reasons why such a sale or lease is in the best interests of the persons living in the area served by the facility to be sold or leased," added the fifth through ninth sentences, deleted the former eighth through twelfth sentences, which read: "If, on or before the date proposed for the sale or lease of the hospital, there is filed with the clerk of the owner a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of the owner, requesting that an election be called and held on the question of the sale or lease with an option to sell the hospital, then it shall be the duty of the owner to call and provide for the holding of an election as petitioned for. In that case, no such sale or lease shall be entered into unless authorized by the affirmative vote of the majority of the qualified voters of the owner who vote on the proposition at such election. Notice of the election shall be given by publication in the same manner as provided for the publication of the initial resolution. The election shall be conducted and the return thereof made, canvassed and declared in the same manner as provided by law in the case of general elections in the owner. If, on or before the date proposed for the sale or lease of the hospital, no such petition is filed with the clerk of the owner, then the owner may sell or lease with an option to sell the hospital," and added "After receiving proposals" at the beginning of the next-to-last sentence.

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When all legal requirements for establishment, operation and designation of service area of home health agency were fully complied with and agency had acquired all proper certificates and/or permits required by law and was in compliance with all applicable state and federal laws and regulations, city did have legal authority to continue as owner of Home Health Agency and operate agency in its multi-county service area. King, March 17, 1994, A.G. Op. #94-0084.

The review and analysis conducted under Section 41-13-15(8) should provide enough information for owners to make a decision concerning which option would be best for the community. Ross, October 4, 1995, A.G. Op. #95-0631.

Based on the facts, if property is a leased facility rather than a community

hospital, then the board would not be subject to the statutory requirements of Section 41-13-15 when selling the property. The Board of Supervisors may sell the property in the manner provided for in Sections 19-7-3 and 19-7-5. Hall, August 23, 1996, A.G. Op. #96-0521.

If, after the review required by subsection eight of this section is carried out, the owner a hospital determines that it is in the best interest of the community that the hospital be leased to a nonprofit entity and that such arrangement would better serve the health care needs of the community, it is within the power of the owner, acting in connection with the hospital board of trustees, to limit proposals to lease to such nonprofit entities. Slade, Dec. 19, 1997, A.G. Op. #97-0772.

A board of supervisors owning a community hospital within the meaning of this section must, if it elects to lease the community hospital without an option to sell, solicit bids therefor by advertisement. Huff, August 7, 1998, A.G. Op. #98-0439.

Pursuant to subsection (7) of this section, and subject to the applicable provisions of subsections (8), (9), and (10) of this section, a lease or sale of a community hospital may be made under such terms and conditions as may be agreed upon by the owner and purchaser or lessee, and shall be conditioned, in part, upon the facility operating in a manner safeguarding community health interests; further, the terms of a proposed lease or sale may include a provision for reverter of the hospital to the municipality/owner in the event that the hospital ceases to operate as a hospital. Myers, February 19, 1999, A.G. Op. #99-0007.

A county board of supervisors could approve the assignment of a hospital lease from a nonprofit corporation to a for profit corporation without being subject to this section as the hospital was operated by a private, nonprofit corporation and was clearly a "leased facility" within the meaning of 41-13-10 (e). Haque, February 19, 1999, A.G. Op. #99-0082.

If a lease of a county owned hospital was entered into under authority of this section and prior to July 15, 1993, then the county could negotiate a lease renewal without advertising and could include therein an option to purchase. Lee, March 3, 1999, A.G. Op. #99-0048.

A board of trustees of a community hospital may convey real property owned by the hospital to the board of supervisors of the county in which the hospital is located. Hurt, May 14, 1999, A.G. Op. #99-0218.

Sections 41-13-15 through 41-13-53 do not authorize the execution of a deed of trust or mortgage upon community hospital real property as collateral for borrowings. Hurt, May 14, 1999, A.G. Op. #99-0218.

Subsection (11) of this section permits a board of supervisors, which has permitted the sublease of a community hospital from the original lessor to a sublessee, to negotiate with the sublessee, without advertising, for a renewal or extension of the original lease not to exceed 15 years upon compliance with the provisions of that subsection. Webb, May 21, 1999, A.G. Op. #99-0248.

A county board of supervisors may create a nonprofit corporation and serve as the sole member thereof and may fund such corporation from the surplus proceeds of a sale or lease of a community hospital owned by the county, when the funds are expended by the corporation to improve the quality of health care provided to citizens and residents of the county, and providing instruction on the improvement of personal health. Griffith, July 23, 1999, A.G. Op. #99-0370.

A county board of supervisors had the authority to lease a hospital or to sell or lease with an option to sell, provided all applicable requirements of the statute were satisfied prior to such transaction. Williamson, Feb. 4, 2000, A.G. Op. #99-0674.

With regard to the lease of a hospital, a county board of supervisors was required to make appropriate findings upon the minutes that the terms of any lease that were agreed upon between the board and the lessee (a nonprofit corporation) were appropriate, considering the intent to continue the provision of health care services to the community. Williamson, Feb. 4, 2000, A.G. Op. #99-0674.

The owners of a community hospital could not adopt criteria and minimum

requirements in a request for proposals under subsection (7) that would limit the respondents only to a nonprofit corporation that had as its sole member the board of the hospital. Galloway, Feb. 11, 2000, A.G. Op. #2000-0036.

The statute permits the inclusion of an option to purchase in an extension or renewal of a lease of a community hospital if the lease was in effect prior to July 15, 1993 and, therefore, a county board of supervisors could amend an existing lease agreement, as extended, to include an option to purchase clause with the existing lessee, thereby allowing the board to negotiate and sell the hospital without the necessity of advertisement for bids. Lee, Jr., March 3, 2000, A.G. Op. #2000-0098.

The owners of a community hospital could not adopt criteria and minimum requirements in a request for proposals under subsection (7) that would limit respondents to a nonprofit corporation that had as its sole member the board of the hospital since such action would be completely anticompetitive and thwart the legislative intent of the statute. Galloway, March 17, 2000, A.G. Op. #2000-0114.

Certificates of need, licenses and permits, which empower community hospitals to exist and provide various medical services, are necessarily owned by the owners of the community hospital, but are managed and operated by the board of trustees thereof; thus, applications for new certificates of need by an existing community hospital are effectively in the name of the owner but must be made by its board of trustees. Broussard, March 29, 2000, A.G. Op. #2000-0156.

A community hospital may not exceed the bounds of its service area and, therefore, a county, as the owner of a community hospital, does not have authority to effect the transfer, under the guise of a lease, of a community hospital's assets, including licenses and licensed beds, to a for-profit corporation which will then use those licenses and licensed beds to open an existing, non-licensed hospital facility owned by it in another county not shown to be in its service area. Moody, May 24, 2002, A.G. Op. #02-0273.

Surplus proceeds from the sale of a nursing home owned by a county should be placed in the county's general fund and the county may then use those funds for any lawful purpose for which general funds may be expended: note that a county may not expend general fund monies for the purpose of maintaining or constructing county or municipal roads. Bailey, Jan. 31, 2003, A.G. Op. #03-0736.

Owners of a community hospital have the statutory authority to enter into a lease with a private company. Thompson, Feb. 6, 2004, A.G. Op. 04-0010.

Interpretation of the phrase "date proposed for the sale" as being the date established in the notice that proposals are to be received is logical and consistent with the purposes of the law. Mitchell, Mar. 5, 2004, A.G. Op. 04-0305.

For the limited purposes of conducting the election provided for in subsection (10) of this section, the county and the city should be viewed as one owner. Mitchell, Mar. 5, 2004, A.G. Op. 04-0305.

Petitions calling for an election on the question of the sale of a community hospital must be filed on or before the date the proposals for purchase of the hospital are received by the owner(s). Mitchell, Mar. 5, 2004, A.G. Op. 04-0305.

This office is of the opinion that the board of trustees of a community hospital may separately or jointly contract for the lease of hospital property which will be used as the site of a specialized healthcare facility. Opinion duplicated in Brown, Apr. 2, 2004, A.G. Op.04-0131. Sneed, Apr. 9, 2004, A.G. Op. 04-0139.

This office is of the opinion that the board of trustees of a community hospital may separately or jointly contract for the lease of hospital property which will be used as the site of a specialized healthcare facility. Opinion duplicated in Sneed, Apr. 9, 2004, A.G. Op. 04-0139. Brown, Apr. 2, 2004, A.G. Op. 04-0131.

A county has the authority to perform work on county property used by a public community hospital and operated by a duly appointed board of trustees of the hospital. Brown, Aug. 20, 2004, A.G. Op. 04-0374.

If the board of supervisors, as owner of the community hospital, and the board of trustees, who operate and govern the hospital, agree to such a name change then

the name of the hospital may be changed. McWilliams, Aug. 6, 2004, A.G. Op. 04-0366.

A publically owned county hospital may enter into written "mutual aid" agreements for temporary loans of hospital equipment to for-profit private facilities in the area for emergency health use, provided that, each temporary loan of equipment is approved by the hospital director. Brown, Aug. 23, 2004, A.G. Op. 04-0373.

Under Section 33-21-1(a) [33-1-21(a)], the fifteen-day annual maximum on military leave applies to a county employee, including an employee of a community hospital or county nursing home established pursuant to Section 41-13-15. McDonald, Mar. 4, 2005, A.G. Op. 05-0064.

Section 41-13-15(11) permits the inclusion of an option to purchase in a renewal of a community hospital lease which was in effect prior to July 15, 1993. Pursuant to the option to purchase, the county may then negotiate and sell the hospital without necessity of advertising for bids or otherwise complying with Sections 41-13-15(7), (8), (9) or (10). Sumners, Oct. 14, 2005, A.G. Op. 05-0436.

A county may amend an existing lease of a hospital to include an option for sale to the lessee on mutually agreeable terms, and, upon amendment, the county may negotiate and sell the hospital to the lessee without necessity of advertisement for bids or compliance with Sections 41-13-15(7), (8), (9) and (10). Hudson, Feb. 24, 2006, A.G. Op. 06-0052.

In regard to the sale or lease of the facilities currently used as a nursing home and hospital, in reviewing all of the proposals, the county must accept the "highest and best," but in no event may it accept terms less than those which were set out in the proposal. Dobbins, Apr. 7, 2006, A.G. Op. 06-0054.

If a board of supervisors makes a factual determination that a community hospital has ceased to use its building, and the board of trustees, if any, have dissolved and the board of supervisors is undertaking or has concluded the process of paying the debts of the hospital, then there would be no contemporaneously existent hospital and the board would not need to comply with Section 41-13-15 in the event of a sale. Logan, July 10, 2006, A.G. Op. 06-0262.

A municipal corporation is a corporation within the meaning of Section 41-13-15, and, accordingly, a city authorized to purchase property under that statute. Logan, July 10, 2006, A.G. Op. 06-0262.

§ 41-13-19. Issuance of bonds; election.

OPINIONS OF THE ATTORNEY GENERAL

If county wants to guarantee payment on loans from banks to community hospital, board of supervisors must comply with procedures outlined in Sections 41-13-19 through 41-13-23 of Mississippi Code for issuance of bonds, notes and other evidence of indebtedness. Palmer, Feb. 16, 1994, A.G. Op. #93-0990.

§ 41-13-23. Levy of ad valorem tax or pledge of revenues to pay bonds.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors that has issued bonds pursuant to Miss. Code Section 41-13-19 for the construction of a hospital may use revenues from the operation of the hospital to pay off such bonds. Dulin, Aug. 22, 1997, A.G. Op. #97-0530.

§ 41-13-25. Imposition of ad valorem tax; retirement of debt.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 41-13-25 specifically authorizes board of supervisors of county and governing body of city to levy taxes for maintenance and operation of hospital created under Miss. Code Sections 41-13-15 through 41-13-51; according to Miss. Code Section 41-13-25, such levy may not exceed five million dollars; further, Miss. Code Section 41-13-25 authorizes governing bodies to pledge these taxes to retirement of debt incurred on behalf of facility, regardless of whether tax has actually been levied. Chamberlin, Feb. 25, 1993, A.G. Op. #93-0050.

County is limited to expending maximum of five mills for maintenance and operation of county hospital in any one year. Palmer, Feb. 16, 1994, A.G. Op. #93-0990.

Should the Board of Supervisors choose to pledge ad valorem taxes to retire a note incurred for the purpose of meeting the current unpaid expenses, they are permitted to do so by the language of Section 41-13-25 if the Board makes a specific factual finding that it is necessary for the retirement of debt of the hospital. Webb, October 5, 1995, A.G. Op. #95-0681.

There is no authority for the board of trustees of a community hospital to acquire and use small purchase procurement cards, i.e., credit cards, issued in the name of the hospital to be used by employees in making small purchases for the hospital. Thornton, Feb. 9, 2001, A.G. Op. #2000-0770.

§ 41-13-29. Board of trustees for county hospitals or other health facilities.

(1)(a) The owners are authorized to appoint trustees for the purpose of operating and governing community hospitals. The owner of a community hospital may remove a trustee after appointment for good cause shown, upon a unanimous vote of all members of the governing board of the owner that appointed the trustee, or upon a majority vote of the governing board of the owner that appointed the trustee after a recommendation from the board of trustees of the hospital that the trustee be removed. To be eligible for appointment, an appointee must be an adult legal resident of the county which has an ownership interest in the community hospital or the county in which the municipality or other political subdivision holding the ownership interest in the community hospital is located. The authority to appoint trustees shall not apply to leased facilities, unless specifically reserved by the owner in the applicable lease agreement.

(b) The board of trustees shall consist of not more than seven (7) members nor less than five (5) members, except where specifically authorized by statute, and shall be appointed by the respective owners on a pro rata basis comparable to the ownership interests in the community hospital. Where the community hospital is owned solely by a county, or any supervisors districts, judicial districts or election district of a county, or by a municipality, the trustees shall be residents of the owning entity.

(c) Trustees for municipally owned community hospitals shall be appointed by the governing authority of the municipality. Trustees for a community hospital owned by a county shall be appointed by the board of

supervisors with each supervisor having the right to nominate one (1) trustee from his district or from the county at large. Appointments exceeding five (5) in number shall be from the county at large. Trustees for a community hospital owned solely by supervisors districts, judicial districts or election district of a county, shall be appointed by the board of supervisors of the county from nominees submitted by the supervisor or supervisors representing the owner district or districts.

(2)(a) Initially the board of trustees shall be appointed as follows: one (1) for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years, and one (1) for a term of five (5) years. Appointments exceeding five (5) in number shall be for terms of four (4) and five (5) years, respectively. Thereafter, all terms shall be for five (5) years. No community hospital trustee holding office on July 1, 1982, shall be affected by this provision, but the terms shall be filled at the expiration thereof according to the provisions of this section; provided, however, that any other specific appointment procedures presently authorized shall likewise not be affected by the terms hereof. Any vacancy on the board of trustees shall be filled within ninety (90) days by appointment by the applicable owner for the remainder of the unexpired term.

(b) From and after January 1, 2016, to be eligible for appointment, an appointee must have no felony convictions, possess at least a high school diploma or the equivalent, owe no outstanding debt to the community hospital, and not be a plaintiff in any pending lawsuit against the community hospital. The appointee may not own an interest in, or be an officer or employee of, a company or business that provides goods or services in direct competition with the community hospital, nor may the appointee's spouse own an interest in, or be an officer of, such company or business.

(3)(a) Any community hospital erected, owned, maintained and operated by any county located in the geographical center of the State of Mississippi and in which State Highways No. 12 and No. 35 intersect, shall be operated by a board of trustees of five (5) members who have the qualifications set forth in this section to be appointed by the board of supervisors from the county at large, one (1) for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years, and one (1) for a term of five (5) years. Thereafter all trustees shall be appointed from the county at large for a period of five (5) years.

(b) Any community hospital erected, owned, maintained and operated by any county situated in the Yazoo-Mississippi Delta Levee District and bordering on the Mississippi River and having a population of not less than forty-five thousand (45,000) and having an assessed valuation of not less than Thirty Million Dollars ($30,000,000.00) for the year 1954, shall be operated by a board of trustees which may consist of not more than eleven (11) members who have the qualifications set forth in this section.

(c) Any hospital erected, owned, maintained and operated by any county having two (2) judicial districts, which is traversed by U.S. Interstate Highway 59, which intersects Highway 84 therein, shall be operated by a

board of trustees which shall consist of seven (7) members who have the qualifications set forth in this section. The first seven (7) members appointed under authority of this paragraph shall be appointed by the board of supervisors for terms as follows:

Each supervisor of Supervisors Districts One and Two shall nominate and the board of supervisors shall appoint one (1) person from each said beat for a one-year term. Each supervisor of Supervisors Districts Three and Four shall nominate and the board of supervisors shall appoint one (1) person from each beat for a two-year term. The supervisor of Supervisors District Five shall nominate and the board of supervisors shall appoint one (1) person from the beat for a three-year term. The medical staff at the hospital shall submit a list of four (4) nominees and the supervisors shall appoint two (2) trustees from the list of nominees, one (1) for a three-year term and one (1) for a one-year term. Thereafter, as the terms of the board of trustee members authorized by this paragraph expire, all but the trustee originally appointed from the medical staff nominees for a one-year term shall be appointed by the board of supervisors for terms of three (3) years. The term of the trustee originally appointed from the medical staff nominees by the board of supervisors for a term of one (1) year shall remain a term of one (1) year and shall thereafter be appointed for a term of one (1) year. The two (2) members appointed from medical staff nominees shall be appointed from a list of two (2) nominees for each position to be submitted by the medical staff of the hospital for each vacancy to be filled. It is the intent of the Legislature that the board of trustees which existed prior to July 1, 1985, was abolished by amendment to this section under Section 5, Chapter 511, Laws of 1985, and the amendment authorized the appointment of a new board of trustees on or after July 1, 1985, in the manner provided in this paragraph. Any member of the board of trustees which existed before July 1, 1985, who has the qualifications set forth in this section shall be eligible for reappointment subject to the provisions of this paragraph.

(d) Any community hospital erected, owned, maintained and operated by any county bordering on the Mississippi River having two (2) judicial districts, wherein U.S. Highway 61 and Mississippi Highway 8 intersect, lying wholly within a levee district, shall be operated by a board of trustees which may consist of not more than nine (9) members who have the qualifications set forth in this section.

(e) Any community hospital system owned, maintained and operated by any county bordering on the Gulf of Mexico and the State of Alabama shall be operated by a board of trustees constituted as follows: seven (7) members shall be selected as provided in subsection (1) of this section and two (2) advisors who shall be the chiefs of staff at those hospitals which are a part of the hospital system; the members must have the qualifications set forth in this section. The term of the chiefs of staff on the board of trustees shall coincide with their service as chiefs of staff at their respective hospitals.

(4) Any community hospital owned, maintained and operated by any county wherein Mississippi Highways 16 and 19 intersect, having a land area

of five hundred sixty-eight (568) square miles, and having a population in excess of twenty-three thousand seven hundred (23,700) according to the 1980 federal decennial census, shall be operated by a board of trustees of five (5) members who have the qualifications set forth in this section, one (1) of whom shall be elected by the qualified electors of each supervisors district of the county in the manner provided herein. Each member so elected shall be a resident and qualified elector of the district from which he is elected. The first elected members of the board of trustees shall be elected at the regular general election held on November 4, 1986. At the election, the members of the board from Supervisors Districts One and Two shall be elected for a term of six (6) years; members of the board from Supervisors Districts Three and Four shall be elected for a term of two (2) years; and the member of the board from Supervisors District Five shall be elected for a term of four (4) years. Each subsequent member of the board shall be elected for a term of six (6) years at the same time as the general election in which the member of the county board of education representing the same supervisors district is elected. All members of the board shall take office on the first Monday of January following the date of their election. The terms of all seven (7) appointed members of the board of trustees holding office on the effective date of this act (Laws 1986, Chapter 462) shall expire on the date that the first elected members of the board take office. The board of trustees provided for herein shall not lease or sell the community hospital property under its jurisdiction unless the board of supervisors of the county calls for an election on the proposition and a majority voting in the election shall approve the lease or sale.

The members of the board of trustees provided for in this subsection shall be compensated a per diem and reimbursed for their expenses and mileage in the same amount and subject to the same restrictions provided for members of the county board of education in Section 37-5-21 and may, at the discretion of the board, choose to participate in any hospital medical benefit plan which may be in effect for hospital employees. Any member of the board of trustees choosing to participate in the plan shall pay the full cost of his participation in the plan so that no expenditure of hospital funds is required.

The name of any qualified elector who is a candidate for the community hospital board of trustees shall be placed on the ballot used in the general elections by the county election commissioners, if the candidate files with the county election commissioners, not more than ninety (90) days and not less than thirty (30) days before the date of the general election, a petition of nomination signed by not less than fifty (50) qualified electors of the county residing within each supervisors district. The candidate in each supervisors district who receives the highest number of votes cast in the district shall be declared elected.

(5) A board of trustees provided for herein may, in its discretion, where funds are available, compensate each trustee per diem in at least the amount established by Section 25-3-69 up to the maximum amount of not more than One Hundred Fifty Dollars ($150.00) for each meeting of the board of trustees or meeting of a committee established by the board of trustees where the

trustee was in attendance, and in addition thereto provide meals at the meetings and compensate each member attending travel expenses at the rate authorized by Section 25-3-41 for actual mileage traveled to and from the place of meeting.

(6) The owner which appointed a trustee may likewise remove him from office by majority vote for failure to attend at least fifty percent (50%) of the regularly scheduled meetings of the board during the twelve-month period preceding the vote, or for violation of any statute relating to the responsibilities of his office, based upon the recommendation of a majority of the remaining trustees.

(7) For community hospitals located in a county having a population of less than one hundred thousand (100,000) according to the most recent federal decennial census, the members of the board of trustees, administrator and any other officials of the community hospital as may be deemed necessary or proper by the board of trustees shall be under bond in an amount not less than Ten Thousand Dollars ($10,000.00) nor more than One Hundred Thousand Dollars ($100,000.00) with some surety company authorized to do business in the State of Mississippi to faithfully perform the duties of his office. For community hospitals located in a county having a population of one hundred thousand (100,000) or more according to the most recent federal decennial census, the bond shall be in an amount not less than Fifty Thousand Dollars ($50,000.00) nor more than Five Hundred Thousand Dollars ($500,000.00). Premiums for the bonds shall be paid from funds of the community hospital.

(8) The members of the board of trustees of a community hospital may, at the discretion of the board, choose to participate in any hospital medical benefit plan or health insurance plan, whether self-funded or otherwise, which may be in effect for hospital employees. Any member of the board of trustees choosing to participate in such plan shall pay the same amount for his or her participation in the plan as hospital employees are required to pay for their participation in such plan.

HISTORY: Codes, 1942, § 7129-55; Laws, 1944, ch. 277, § 5; Laws, 1948, ch. 413, § 2; Laws, 1954, ch. 287; Laws, 1955, Ex. Sess. ch. 32, § 1; Laws, 1956, ch. 297, § 2; Laws, 1958, ch. 363, § 2; Laws, 1962, ch. 402; Laws, 1976, ch. 321; Laws, 1977, ch. 477; Laws, 1979, ch. 327; Laws, 1982, ch. 395, § 2; Laws, 1985, ch. 511, § 5; Laws, 1986, ch. 458, § 37; Laws, 1986, ch. 462, § 1; Laws, 1995, ch. 378, § 1; Laws, 2009, ch. 452, § 1; Laws, 2015, ch. 484, § 6, eff from and after Jan. 1, 2016; Laws, 2018, ch. 430, § 1, eff from and after July 1, 2018; Laws, 2019, ch. 306, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment deleted "the amount of" following "compensate each trustee per diem in" in (5); and added (8).

OPINIONS OF THE ATTORNEY GENERAL

Trustees for a community hospital owned by a county are to be appointed by the board of supervisors, with each board member having an exclusive right to nominate one member from their district or the community at large. Williamson, Jan. 7, 1986, A.G. Op. #86-0001.

In the event of a vacancy on the board of

trustees for a community hospital owned by a county, each supervisor may select a nominee from his or her own district or the county at large, the board may vote to approve or reject that nominee, and if rejected, that supervisor may name a different nominee. Peters, July 18, 1997, A.G. Op. #97-0372.

If a member of the board of commissioners of a county hospital moves to an adjacent county, he is required to vacate his position, even if he has a business in the city which he continues to maintain. Dulin, April 30, 1999, A.G. Op. #99-0140.

Each supervisor can nominate one trustee from his district or from the county at large, but they should make appointments exceeding five from the county at large. Minga, Oct. 19, 2001, A.G. Op. #01-0653.

The failure of one district to have a trustee appointed by that district supervisor does not invalidate the appointment of the other trustees or the acts of the board. Minga, Oct. 19, 2001, A.G. Op. #01-0653.

If the vacancy on the board of trustees for a county hospital is an at-large appointment, the appointment shall be made within 90 days by the board of supervisors as a whole. However, if the vacancy is not an at-large appointment, the appropriate supervisor shall submit a nomination and the appointment shall be made within 90 days by the board of supervisors. Thompson, Feb. 6, 2004, A.G. Op. 04-0010.

Members of boards of trustees of community hospitals may not participate in hospitals' life and health insurance programs after they leave their positions as trustees. James, Jan. 6, 2005, A.G. Op. 05-0580.

Trustees of a community hospital are entitled to be reimbursed at the rate of 20 cents per mile for travel expenses incurred while performing official duties; however, governing authorities of the county may authorize an increase in the mileage reimbursement in an amount not to exceed the rate authorized for state officers and employees in Section 25-3-41 (1). Hall, July 29, 2005, A.G. Op. 05-0353.

Members of boards of trustees of community hospitals may not participate in hospitals' life and health insurance programs after they leave their positions as trustees. James, Jan. 6, 2005, A.G. Op. 05-0580.

§ 41-13-35. General powers and duties of trustees; bonds; prohibited acts or behavior of trustees, individual trustee, or agent or servant of trustee.

JUDICIAL DECISIONS

1. In general.

When plaintiffs accepted early retirement, they did so being bound to the health plan language contained in the reservation-of-rights provision; thus, when the board of trustees subsequently approved the revised guidelines to the health plan requiring retirees to pay the full premium for coverage in the future, as the board was authorized to do, plaintiffs were bound by that health plan amendment. Cutrer v. Singing River Health Sys., 302 So. 3d 648, 2020 Miss. App. LEXIS 30 (Miss. Ct. App.), cert. denied, 302 So. 3d 644, 2020 Miss. LEXIS 354 (Miss. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Governing boards of public hospitals may, in their discretion, enter into a contract with a private insurance company for a retirement plan for their employees under authority of this section (Code 1942, § 7129-56.5). Ops. A.G., 1963-1965, p 108.

The board of trustees of a community hospital does not have the authority to make a loan to the a county board of supervisors if such a loan would not assist in the operation of the hospital. Brown, Nov. 27, 1991, A.G. Op. #91-0874.

The board of trustees of a community

hospital does not have the authority to terminate a lease contract without an event of default on the part of the physician/tenant, and termination of such a lease arrangement is controlled by the terms and conditions of the original contract, assuming it is a valid and lawful lease. Nichols, June 19, 1992, A.G. Op. #92-0412.

Board of trustees of county hospital can legally purchase building from local physician and contract with physician as full-time employee of hospital; however, there is apparently no authority empowering boards of trustees of community hospitals to purchase "good will" through purchase of existing medical practice. Hurt, August 3, 1992, A.G. Op. #92-0385.

Community hospital may, through contract, provide organizational capital and assistance to Mississippi limited partnership for purposes of establishing outpatient care facilities, including construction, acquisition, operation and maintenance of facilities; likewise, hospital may lease property to partnership to be used as site for outpatient facility, contract for sale of outpatient services to partnership based on fair market value, and provide by contract that operating costs of outpatient facility incurred by hospital and partnership with which hospital has contracted to operate outpatient facility are to be reimbursed out of operational revenue of facility. Cowart, August 5, 1992, A.G. Op. #92-0098.

Board of Trustees of county hospital has authority to purchase land, buildings, medical and laboratory equipment, accounts receivable and other tangible items to be utilized in a medical practice but has no such authority to purchase intangibles such as good will, patient referrals, etc. Hurt, Sept. 18, 1992, A.G. Op. #92-0660.

Where there is no existing board for community hospital, supervisor's districts that own hospital may not, under Miss. Const. Sec. 183, execute guaranty as required by loan agreement to fund reopening of hospital. Lee, Dec. 9, 1992, A.G. Op. #92-0941.

City and county may pledge ad valorem taxes that have not actually been levied or collected as security for loan to community hospital, for purpose of operation and maintenance, including expenditures for recruitment of physicians as provided for in Miss. Code Section 41-13-35(5)(f). Chamberlin, Feb. 25, 1993, A.G. Op. #93-0050.

Miss. Code Section 41-13-35(5)(g) provides that trustees of hospital system, consisting of two general acute care community hospitals owned by county, can contract with nonprofit corporation. Cowart, Mar. 10, 1993, A.G. Op. #92-1010.

Miss. Code Section 41-13-35 gives board of trustees of community hospital broad authority in governing affairs of hospital, and this authority includes retaining counsel; whether board needs advice of counsel at every meeting or at particular meeting is matter within discretion of board. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Miss. Code Section 41-13-35(5) authorizes board of trustees to establish equitable wage and salary programs and employment benefits; therefore, board, in its discretion, may reduce salary of administrator or any other employee regardless of whether work load has been reduced. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Miss. Code Section 41-13-35(1) authorizes board of trustees of community hospital to appoint administrator and to delegate reasonable authority to administrator for operation and maintenance of hospital; whether board should approve purchase of equipment or whether board should delegate some of this responsibility to administrator is matter for board to decide in exercise of sound discretion. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Miss. Code Section 41-13-35(3) gives hospital board broad authority and responsibility for governing community hospital. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Hospital board of trustees has authority to remove any employee of community hospital pursuant to Miss. Code Section 41-13-35. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Section 41-13-29(5) provides for compensation of trustees in form of per diem payments in amount established in Section 25-3-69 and no other compensation is provided; trustees for community hospital

are not employees within meaning of Section 41-13-35(5)(b) for purposes of hospital's self-funded medical plan. Genin, Jan. 25, 1994, A.G. Op. #93-0852.

Section 41-13-35(5)(n) authorizes the Board of Trustees of a community hospital to enter into contracts with an insurance reciprocal established pursuant to and operated in accordance with Section 41-13-10 et seq. Evans, August 25, 1995, A.G. Op. #95-0542.

Based upon Section 41-13-35(o), approval of the owner is required only if such acquisition includes the purchase of real property. Otherwise, the ratification of the owner is not legally required. Ross, May 24, 1996, A.G. Op. #96-0333.

A community hospital board of trustees would have authority to cause to be incorporated a nonprofit foundation to solicit contributions and raise funds to support the hospital and its activities, but would be subject to the prohibitions against having any financial interest in the foundation; since such boards are entities and persons authorized to act as incorporators of Mississippi nonprofit corporations, a board would be authorized to act as an incorporator of a nonprofit foundation which would solicit contributions to support hospital activities. O'Donnell, March 27, 1998, A.G. Op. #98-0169.

Paragraph (f) of subsection (5) authorizes hospital trustees, in their discretion, to offer financial and other incentives to recruit and retain the services of physicians in the hospital service area upon the proper findings of the facts necessary for the granting of such assistance set forth in the statute. Williams, August 28, 1998, A.G. Op. #98-0482.

A community hospital is authorized to purchase all tangible assets of a physical therapy and rehabilitation practice for no more than fair market value, without regard to § 31-7-13 and the general bid procedures set out therein; however, if real property is to be purchased as a part of this transaction, such purchase must be ratified by the governing authorities constituting the owner or owners of the hospital; further, no consideration may be paid for intangible assets of the practice. Williams, May 14, 1999, A.G. Op. #99-0215.

A community hospital may hire full-time medical transcriptionists who will complete the majority of their responsibilities while working at home and may also install and maintain the transcription equipment required by each such medical transcriptionist working from home. Bradley, July 30, 1999, A.G. Op. #99-0331.

A board of trustees of a community hospital may acquire a building and related equipment from a physician, with the permission of the owner of the community hospital, and lease the building back to the physician, and so long as the center is not a separate identifiable legal entity, a certificate of need therefor is not required. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

A board of trustees of a community hospital may construct and equip a facility suitable for a single service ambulatory surgery facility and may thereafter lease such building and equipment to a physician. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

If a lease of a building and/or equipment is for the purpose of recruiting and financially assisting physicians and other health care practitioners in establishing or relocating practices within the service area of the community hospital, subsection (5)(f) permits boards of trustees of community hospitals to provide financial incentives, including reduced rentals; however, if such a lease is not for such purpose, the board of trustees must obtain rent at the fair market value. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

The board of trustees of a community hospital could act as the sole member of a Mississippi nonprofit corporation formed for the purposes of acquiring and holding real property adjacent to the hospital that would be leased to a Mississippi limited liability company, which would construct a medical office building on the property. Galloway, Feb. 11, 2000, A.G. Op. #2000-0036.

Certificates of need, licenses and permits, which empower community hospitals to exist and provide medical services, are necessarily owned by the owners of the community hospital, but are managed and operated by its board of trustees;

applications for new certificates of need by an existing community hospital are effectively in the name of the owner but must be made by its board of trustees. Broussard, March 29, 2000, A.G. Op. #2000-0156.

Pursuant to subsection (5)(n) and by complying with it in situations it contemplates, the board of trustees of a community hospital has the authority to enter into a limited liability company without the written approval of the board of supervisors so long as no capital contribution is made to the company. Broussard, March 29, 2000, A.G. Op. #2000-0156.

A community hospital may pay the cost of continuing education required by state law and associated expenses for the continuing education of paramedics who have agreed to work for the hospital for a stipulated period of time. Pogue, Nov. 3, 2000, A.G. Op. #2000-0646.

The proviso clause of subsection (5)(k) applies to new debt and new pledges in any given year, and does not require or contemplate a reauthorization of debt incurred or pledges made in prior years. Williams, Oct. 12, 2001, A.G. Op. #01-0646.

The board of trustees of a community hospital has authority to contract with the hospital administrator for the furnishing of a car, provided that the car part of the compensation package and is included in the administrator's contract as part of the compensation package and is not additional compensation for services already rendered. McWilliams, Feb. 22, 2002, A.G. Op. #02-0059.

A community hospital may not exceed the bounds of its service area and, therefore, a county, as the owner of a community hospital, does not have authority to effect the transfer, under the guise of a lease, of a community hospital's assets, including licenses and licensed beds, to a for-profit corporation which will then use those licenses and licensed beds to open an existing, non-licensed hospital facility owned by it in another county not shown to be in its service area. Moody, May 24, 2002, A.G. Op. #02-0273.

Pursuant to Section 41-13-35(5)(g), the board of trustees of a community hospital may enter into a lease agreement with an long term acute care (LTAC) hospital and, further, the board may enter into a contract with the LTAC hospital for provision of designated ancillary services. Cockrell, Mar. 7, 2003, A.G. Op. 03-0097.

Under Section 41-13-35(5)(f) the board of trustees, in its discretion, may offer financial assistance to a hospital staffed physician already established in the service area for the purpose of defraying the cost of the physician's professional malpractice insurance premiums, upon proper findings of facts necessary for the granting of such assistance set forth in the statute. O'Donnell, Apr. 18, 2003, A.G. Op. 03-0173.

It is clearly within the authority of the board of trustees of the Delta Regional Medical Center to establish an employee benefit and incentive program which becomes part of the employment contract. Siler, July 18, 2003, A.G. Op. 03-0338.

The board of trustees of a community hospital may adopt a disciplinary program for employees based on established parking policies. In turn, the hospital administrator has the power to enforce compliance with and obedience to that program. Dees, Oct. 24, 2003, A.G. Op. 03-0515.

A community hospital has the authority to include a default provision in a contract for billing of patient services unless that provision is "expressly prohibited by applicable statutory or constitutional provisions." Russell, Feb. 6, 2004, A.G. Op. 04-0001.

Whether a community hospital may properly consider accounts with payment arrangements "current" and "not in default" as long as the patient complies with the agreed payment schedule is a factual determination which is left to the discretion of the board of trustees. Russell, Feb. 6, 2004, A.G. Op. 04-0001.

The board of trustees of a community hospital is empowered to enter into a contract with several physicians whereby a specialized healthcare facility will be jointly operated, and the contract may include provisions whereby the hospital will provide hospital space, certain equipment and services. Opinion duplicated in Brown, Apr. 2, 2004, A.G. Op.04-0131. Sneed, Apr. 9, 2004, A.G. Op. 04-0139.

Subdivision (5)(b) of this section provides the Hospital System the ability to adopt and administer an ineligible 457(f) plan. This opinion does not contradict earlier opinions nor supersede them in that they relate to the eligible 457(b) plan as provided for in §§ 25-14-1 et seq. Williams, May 14, 2004, A.G. Op. 03-0660.

The board of trustees of a community hospital is empowered to enter into a contract with a private for-profit corporation for the purpose of jointly developing and operating an assisted living facility at the hospital premises. O'Donnell, May 14, 2004, A.G. Op. 04-0175.

Boards of trustees of community hospitals have broad powers under this section, including the power to provide ambulance service or to contract with any third party, public or private, to provide such service. As such, the board of trustees of a community hospital would not be required to use an ambulance service that has been designated by the county board of supervisors. Malone, July 16, 2004, A.G. Op. 04-0295.

A participating community hospital would not be authorized to make matching employer contributions in the deferred compensation program authorized under Sections 25-14-1 et seq. Robertson, June 26, 2006, A.G. Op. 06-0241.

While the board of trustees of a community hospital is not liable for payment of the taxes on the leasehold interest of a clinic used and occupied by the private physicians and may not pay the taxes for the physicians, the board may provide funds to the physicians as an incentive. Webb, Dec. 22, 2006, A.G. Op. 06-0629.

§ 41-13-36. Employment of administrator; administrator's powers and duties.

OPINIONS OF THE ATTORNEY GENERAL

The board of trustees of a community hospital may adopt a disciplinary program for employees based on established parking policies. In turn, the hospital administrator has the power to enforce compliance with and obedience to that program. Dees, Oct. 24, 2003, A.G. Op. 03-0515.

§ 41-13-38. Provisions of certain loans by hospital; financial assistance to nonprofit groups.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 41-13-38(2), which authorizes community hospitals to provide financial assistance and grants to nonprofit groups, permits board of trustees of hospital to provide financial assistance and grants to nonprofit health care provider groups from time to time, provided that board makes determination at time of each grant that such arrangement will benefit health or welfare of citizens of service area of hospital; however, no binding agreement which commits hospital to program of future grants or assistance may be entered into, for reason that these findings must be found to exist at time of each instance of financial assistance; also, absent specific statutory authority, no agreement of any kind can be made which purports to bind hospital beyond term of office of majority of members of board which enters into such agreement. Cowart, Jan. 20, 1993, A.G. Op. #93-0844.

Miss. Code Section 41-13-38 authorizes community hospital boards of trustees to provide financial assistance to nonprofit health care provider groups and other recognized nonprofit entities "where it is determined by the board that such action will benefit the health or welfare of the citizens of the service area"; this includes financial assistance in form of in-kind support and services. Cowart, Mar. 10, 1993, A.G. Op. #92-1010.

The board of trustees of a public hospital may provide grants and financial assistance to a county health department for

the purpose of funding health services provided by such department to the hospital so long as the hospital board makes the requisite determination that the proposed assistance "will benefit the health or welfare of the citizens of the service area" and includes such determination in the minutes of the board each time a grant or contribution of financial assistance is proposed. Oliver, Aug. 15, 1997, A.G. Op. #97-0490.

The board of trustees of a hospital may provide financial assistance in the form of grants of cash and/or in-kind support and services to a nonprofit health care provider where it is determined by the board that such action will benefit the health or welfare of the citizens of the service area. Oliver, Dec. 19, 1997, A.G. Op. #97-0782.

If a hospital board of trustees determines that such action will benefit the health or welfare of the citizens of the service area, then it may provide financial assistance to a nonprofit health care provider in the form of cash, loans, and/or in-kind support services. Williamson, May 22, 1998, A.G. Op. #98-0269.

While the board of trustees of a community hospital is not liable for payment of the taxes on the leasehold interest of a clinic used and occupied by the private physicians and may not pay the taxes for the physicians, the board may provide funds to the physicians as an incentive. Webb, Dec. 22, 2006, A.G. Op. 06-0629.

In the process of "winding down" its operations, the Board of Trustees of the Beat 4 Community Hospital, owned by Newton county, is authorized under Miss. Code Ann. § 41-13-38(2) to disburse its remaining funds to Newton Hospital, Inc., a privately-owned non-profit hospital corporation which is building the new Newton County Hospital, upon a finding made by the Beat 4 Community Hospital Board of Trustees and the Newton County Board of Supervisors, and recorded in their minutes, that such action would benefit the health or welfare of the citizens of the service area. Monroe, March 16, 2007, A.G. Op. #00109, 2007 Miss. AG LEXIS 105.

§ 41-13-39. Trustees may establish day care centers.

OPINIONS OF THE ATTORNEY GENERAL

Governing boards of public hospitals may, in their discretion, enter into a contract with a private insurance company for a retirement plan for their employees under authority of this section (Code 1942, § 7129-56.5). Ops. A.G., 1963-1965, p 108.

CHAPTER 14.

MISSISSIPPI ICU INFRASTRUCTURE ACT

Sec.

§ 41-14-1. Short title.

This chapter shall be known and may be cited as the "Mississippi ICU Infrastructure Act."

HISTORY: Laws, 2020, ch. 500 § 2, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-3. Establishment and administration of the ICU Infrastructure Program to help hospitals increase treatment capacity related to the COVID-19 pandemic.

In response to the COVID-19 pandemic, the Mississippi Department of Health shall establish and administer the ICU Infrastructure Program for the purpose of providing funds to hospitals to increase treatment capacity related to the COVID-19 pandemic, including adding intensive care units, isolation rooms or negative pressure rooms, and related construction and facilitation costs, but not to include any administrative expenses or costs or any staffing expenses or costs. For the purpose of this section, "related construction and facilitation costs" is defined as allowing funding for intensive care units, negative pressure rooms, or isolation rooms, related medical equipment and any needed HVAC system alterations to accommodate the negative pressure, isolation rooms and intensive care units.

HISTORY: Laws, 2020, ch. 500 § 3, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-5. Department of Health duties and responsibilities related to governing the administration of the program; allocation of program funds.

(1) The Department of Health shall:

(a) Promulgate rules and regulations to govern the administration of the program;

(b) Make every effort to expend the funds appropriated to the program established in this chapter by October 30, 2020;

(c) Require recipients of funds under this program to certify that there is a need to add intensive care units, isolation rooms or negative pressure rooms at the facility receiving funds;

(d) Require recipients of funds under this program to certify that the facility adding intensive care units, isolation rooms or negative pressure rooms can adequately staff such units or rooms; and

(e) Certify to the Department of Finance and Administration that each expenditure of the funds appropriated to the Department of Health under this chapter is in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act.

(2) No individual hospital shall receive more than twenty-five percent (25%) of the funds appropriated to this program.

(3) The Department of Health may retain up to Fifty Thousand Dollars ($50,000.00) of the funds appropriated to the program established in this chapter to pay reasonable expenses incurred in the administration of the program.

(4) Out of the funds appropriated to this program, the Department of Health shall expend twenty percent (20%) or more of such funds for hospitals in Mississippi that are either designated as a Level III Trauma Center or a Level IV Trauma Center.

HISTORY: Laws, 2020, ch. 500, § 4, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-7. ICU Infrastructure Fund created; use of monies; unexpended monies.

(1) There is created a special fund in the State Treasury, to be known as the "ICU Infrastructure Fund," from which the awards authorized under the ICU Infrastructure Program shall be disbursed by the Department of Health.

(2)(a) All monies shall be disbursed from the fund created in subsection (1) of this section in compliance with the guidelines, guidance, rules, regulations or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. However, unexpended amounts of any monies unrelated to the Coronavirus Relief Fund, whether appropriated by the Legislature or donated by any public or private entity, remaining in the funds at the end of a fiscal year shall not lapse into the Budget Contingency Fund or the State General Fund, and any

investment earnings or interest earned on amounts in the program fund shall be deposited to the credit of the ICU Infrastructure Fund; and

(b) If on December 15, 2020, there are unexpended Coronavirus Relief Fund monies remaining in the fund created in this section, those funds shall be transferred into the Unemployment Compensation Fund no later than December 30, 2020.

(3) The use of funds allocated under this program shall be subject to audit by the United States Department of the Treasury's Office of Inspector General and the Mississippi Office of the State Auditor. Each person receiving funds under these programs found to be fully or partially noncompliant with the requirements in this chapter shall return to the state all or a portion of the funds received.

HISTORY: Laws, 2020, ch. 500, § 5, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 1, effective October 9, 2020, provides:

"SECTION 1. Upon the effective date of this act, the State Fiscal Officer shall transfer to the "ICU Infrastructure Fund" out of the Budget Contingency Fund..... $ 10,000,000.00."

Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides:

"SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-9. Repayment of funds expended for purpose not complying with federal guidelines.

If the Office of Inspector General of the United States Department of the Treasury, or the Office of Inspector General of any other federal agency having oversight over the use of monies from the Coronavirus Relief Fund established by the CARES Act (a) determines that the Department of Health or recipient has expended or otherwise used any of the funds appropriated to the Department of Health under this chapter for any purpose that is not in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act, and (b) the State of Mississippi is required to repay the federal government for any of those funds that the Office of the Inspector General determined were expended or otherwise used improperly by the Department of Health or recipient, then the Department of Health or recipient that expended or otherwise used those funds improperly shall be required to pay the amount of those funds to the State of Mississippi for repayment to the federal government.

HISTORY: Laws, 2020, ch. 500, § 6, eff from and after passage(became law without the Governor's signature on) (October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect."

§ 41-14-11. Status report of appropriated funds.

On October 15, 2020, the Department of Health shall provide the Lieutenant Governor, the Speaker of the House of Representatives, the Chair of the Senate Public Health and Welfare Committee, and the Chair of the House Public Health and Human Services Committee with a status report of the funds appropriated to it under this chapter. Thereafter, the Department of Health shall report weekly on the status of the funds under this chapter until October 30, 2020 or until the funds under this chapter are fully expended, whichever is later.

HISTORY: Laws, 2020, ch. 500, § 7, eff from and after passage (became law without the Governor's signature on October 9, 2020).

Editor's Notes — Laws of 2020, ch. 500, § 8, effective October 9, 2020, provides: "SECTION 8. If any section, paragraph, sentence, clause, phrase, or any part of this act [Chapter 500, Laws of 2020] is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect.""

CHAPTER 19.

FACILITIES AND SERVICES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR MENTAL ILLNESS

FACILITIES AND SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION OR MENTAL ILLNESS

§ 41-19-33. Regional commissions; establishment; duties and authority.

(1) Each region so designated or established under Section 41-19-31 shall establish a regional commission to be composed of members appointed by the boards of supervisors of the various counties in the region. It shall be the duty of such regional commission to administer mental health/intellectual disability programs certified and required by the State Board of Mental Health and as

specified in Section 41-4-1(2). In addition, once designated and established as provided hereinabove, a regional commission shall have the following authority and shall pursue and promote the following general purposes:

(a) To establish, own, lease, acquire, construct, build, operate and maintain mental illness, mental health, intellectual disability, alcoholism and general rehabilitative facilities and services designed to serve the needs of the people of the region so designated, provided that the services supplied by the regional commissions shall include those services determined by the Department of Mental Health to be necessary and may include, in addition to the above, services for persons with developmental and learning disabilities; for persons suffering from narcotic addiction and problems of drug abuse and drug dependence; and for the aging as designated and certified by the Department of Mental Health. Such regional mental health and intellectual disability commissions and other community service providers shall, on or before July 1 of each year, submit an annual operational plan to the Department of Mental Health for approval or disapproval based on the minimum standards and minimum required services established by the department for certification and itemize the services as specified in Section 41-4-1(2), including financial statements. As part of the annual operation plan required by Section 41-4-7(h) submitted by any regional community mental health center or by any other reasonable certification deemed acceptable by the department, the community mental health center shall state those services specified in Section 41-4-1(2) that it will provide and also those services that it will not provide. If the department finds deficiencies in the plan of any regional commission or community service provider based on the minimum standards and minimum required services established for certification, the department shall give the regional commission or community service provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. The regional commission or community service provider shall develop a sustainability business plan within thirty (30) days of being placed on probation, which shall be signed by all commissioners and shall include policies to address one or more of the following: the deficiencies in programmatic services, clinical service staff expectations, timely and appropriate billing, processes to obtain credentialing for staff, monthly reporting processes, third-party financial reporting and any other required documentation as determined by the department. After the six-month probationary period, if the department determines that the regional commission or community service provider still does not meet the minimum standards and minimum required services established for certification, the department may remove the certification of the commission or provider, and from and after July 1, 2011, the commission or provider shall be ineligible for state funds from Medicaid reimbursement or other funding sources for those services. After the six-month probationary period, the Department of Mental Health may identify an appropriate community service provider to provide any core services in that county that are not provided by a community

mental health center. However, the department shall not offer reimbursement or other accommodations to a community service provider of core services that were not offered to the decertified community mental health center for the same or similar services.

(b) To provide facilities and services for the prevention of mental illness, mental disorders, developmental and learning disabilities, alcoholism, narcotic addiction, drug abuse, drug dependence and other related handicaps or problems (including the problems of the aging) among the people of the region so designated, and for the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(c) To promote increased understanding of the problems of mental illness, intellectual disabilities, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse and drug dependence and other related problems (including the problems of the aging) by the people of the region, and also to promote increased understanding of the purposes and methods of the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(d) To enter into contracts and to make such other arrangements as may be necessary, from time to time, with the United States government, the government of the State of Mississippi and such other agencies or governmental bodies as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, an intellectual disability, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) as designated and certified by the Department of Mental Health.

(e) To enter into contracts and make such other arrangements as may be necessary with any and all private businesses, corporations, partnerships, proprietorships or other private agencies, whether organized for profit or otherwise, as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, an intellectual disability, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) relating to minimum services established by the Department of Mental Health.

(f) To promote the general mental health of the people of the region.

(g) To pay the administrative costs of the operation of the regional commissions, including per diem for the members of the commission and its employees, attorney's fees, if and when such are required in the opinion of the commission, and such other expenses of the commission as may be

necessary. The Department of Mental Health standards and audit rules shall determine what administrative cost figures shall consist of for the purposes of this paragraph. Each regional commission shall submit a cost report annually to the Department of Mental Health in accordance with guidelines promulgated by the department.

(h) To employ and compensate any personnel that may be necessary to effectively carry out the programs and services established under the provisions of the aforesaid act, provided such person meets the standards established by the Department of Mental Health.

(i) To acquire whatever hazard, casualty or workers' compensation insurance that may be necessary for any property, real or personal, owned, leased or rented by the commissions, or any employees or personnel hired by the commissions.

(j) To acquire professional liability insurance on all employees as may be deemed necessary and proper by the commission, and to pay, out of the funds of the commission, all premiums due and payable on account thereof.

(k) To provide and finance within their own facilities, or through agreements or contracts with other local, state or federal agencies or institutions, nonprofit corporations, or political subdivisions or representatives thereof, programs and services for persons with mental illness, including treatment for alcoholics, and promulgating and administering of programs to combat drug abuse and programs for services for persons with an intellectual disability.

(*l*) To borrow money from private lending institutions in order to promote any of the foregoing purposes. A commission may pledge collateral, including real estate, to secure the repayment of money borrowed under the authority of this paragraph. Any such borrowing undertaken by a commission shall be on terms and conditions that are prudent in the sound judgment of the members of the commission, and the interest on any such loan shall not exceed the amount specified in Section 75-17-105. Any money borrowed, debts incurred or other obligations undertaken by a commission, regardless of whether borrowed, incurred or undertaken before or after March 15, 1995, shall be valid, binding and enforceable if it or they are borrowed, incurred or undertaken for any purpose specified in this section and otherwise conform to the requirements of this paragraph.

(m) To acquire, own and dispose of real and personal property. Any real and personal property paid for with state and/or county appropriated funds must have the written approval of the Department of Mental Health and/or the county board of supervisors, depending on the original source of funding, before being disposed of under this paragraph.

(n) To enter into managed care contracts and make such other arrangements as may be deemed necessary or appropriate by the regional commission in order to participate in any managed care program. Any such contract or arrangement affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(o) To provide facilities and services on a discounted or capitated basis. Any such action when affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(p) To enter into contracts, agreements or other arrangements with any person, payor, provider or other entity, under which the regional commission assumes financial risk for the provision or delivery of any services, when deemed to be necessary or appropriate by the regional commission. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(q) To provide direct or indirect funding, grants, financial support and assistance for any health maintenance organization, preferred provider organization or other managed care entity or contractor, where such organization, entity or contractor is operated on a nonprofit basis. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(r) To form, establish, operate, and/or be a member of or participant in, either individually or with one or more other regional commissions, any managed care entity as defined in Section 83-41-403(c). Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(s) To meet at least annually with the board of supervisors of each county in its region for the purpose of presenting its total annual budget and total mental health/intellectual disability services system. The commission shall submit an annual report on the adult mental health services, children mental health services and intellectual disability services required by the State Board of Mental Health.

(t) To provide alternative living arrangements for persons with serious mental illness, including, but not limited to, group homes for persons with chronic mental illness.

(u) To make purchases and enter into contracts for purchasing in compliance with the public purchasing law, Sections 31-7-12 and 31-7-13, with compliance with the public purchasing law subject to audit by the State Department of Audit.

(v) To ensure that all available funds are used for the benefit of persons with mental illness, persons with an intellectual disability, substance abusers and persons with developmental disabilities with maximum efficiency and minimum administrative cost. At any time a regional commission, and/or other related organization whatever it may be, accumulates surplus funds in excess of one-half (1/2) of its annual operating budget, the entity must submit a plan to the Department of Mental Health stating the capital improvements or other projects that require such surplus accumulation. If the required plan is not submitted within forty-five (45) days of the

end of the applicable fiscal year, the Department of Mental Health shall withhold all state appropriated funds from such regional commission until such time as the capital improvement plan is submitted. If the submitted capital improvement plan is not accepted by the department, the surplus funds shall be expended by the regional commission in the local mental health region on group homes for persons with mental illness, persons with an intellectual disability, substance abusers, children or other mental health/intellectual disability services approved by the Department of Mental Health.

(w) Notwithstanding any other provision of law, to fingerprint and perform a criminal history record check on every employee or volunteer. Every employee or volunteer shall provide a valid current social security number and/or driver's license number that will be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check.

(x) Notwithstanding any other provisions of law, each regional commission shall have the authority to create and operate a primary care health clinic to treat (i) its patients; and (ii) its patients' family members related within the third degree; and (iii) its patients' household members or caregivers, subject to the following requirements:

(i) The regional commission may employ and compensate any personnel necessary and must satisfy applicable state and federal laws and regulations regarding the administration and operation of a primary care health clinic.

(ii) A Mississippi licensed physician must be employed or under agreement with the regional commission to provide medical direction and/or to carry out the physician responsibilities as described under applicable state and/or federal law and regulations.

(iii) The physician providing medical direction for the primary care clinic shall not be certified solely in psychiatry.

(iv) A sliding fee scale may be used by the regional commission when no other payer source is identified.

(v) The regional commission must ensure services will be available and accessible promptly and in a manner that preserves human dignity and assures continuity of care.

(vi) The regional commission must provide a semiannual report to the Chairmen of the Public Health Committees in both the House of Representatives and Senate. At a minimum, for each reporting period, these reports shall describe the number of patients provided primary care services, the types of services provided, and the payer source for the patients. Except for patient information and any other information that may be exempt from disclosure under the Health Information Portability and Accountability Act (HIPAA) and the Mississippi Public Records Act, the reports shall be considered public records.

(vii) The regional commission must employ or contract with a core

clinical staff that is multidisciplinary and culturally and linguistically competent.

(viii) The regional commission must ensure that its physician as described in subparagraph (ii) of this paragraph (x) has admitting privileges at one or more local hospitals or has an agreement with a physician who has admitting privileges at one or more local hospitals to ensure continuity of care.

(ix) The regional commission must provide an independent financial audit report to the State Department of Mental Health and, except for patient information and any other information that may be exempt from disclosure under HIPAA and the Mississippi Public Records Act, the audit report shall be considered a public record.

For the purposes of this paragraph (x), the term "caregiver" means an individual who has the principal and primary responsibility for caring for a child or dependent adult, especially in the home setting.

(y) In general to take any action which will promote, either directly or indirectly, any and all of the foregoing purposes.

(z) All regional commissioners shall receive new orientation training and annual training with continuing education regarding the Mississippi mental health system and services as developed by the State Department of Mental Health. Training shall be provided at the expense of the department except for travel expenses which shall be paid by the regional commission.

(2) The types of services established by the State Department of Mental Health that must be provided by the regional mental health/intellectual disability centers for certification by the department, and the minimum levels and standards for those services established by the department, shall be provided by the regional mental health/intellectual disability centers to children when such services are appropriate for children, in the determination of the department.

(3) Each regional commission shall compile quarterly financial statements and status reports from each individual community health center. The compiled reports shall be submitted to the coordinator quarterly. The reports shall contain a:

(a) Balance sheet;

(b) Statement of operations;

(c) Statement of cash flows; and

(d) Description of the status of individual community health center's actions taken to increase access to and availability of community mental health services.

HISTORY: Codes, 1942, § 6909-58; Laws, 1966, ch. 477, § 2; Laws, 1973, ch. 384, § 1; Laws, 1984, ch. 495, § 16; reenacted and amended, Laws, 1985, ch. 474, § 25; Laws, 1986, ch. 438, § 25; Laws, 1987, ch. 483, § 26; Laws, 1988, ch. 442, § 23; Laws, 1989, ch. 537, § 22; Laws, 1990, ch. 518, § 23; Laws, 1991, ch. 618, § 22; Laws, 1992, ch. 491 § 23; Laws, 1995, ch. 410, § 1; Laws, 1996, ch. 342, § 1; Laws, 1996, ch. 463, § 1; Laws, 1997, ch. 587, § 3, eff July 1, 1997; Laws, 2003, ch. 415, § 1; Laws, 2010, ch. 476, § 30; Laws, 2011, ch. 501, § 5; Laws, 2014, ch. 459, § 1,

eff from and after July 1, 2014; Laws, 2020, ch. 479, § 9, eff from and after passage (approved July 8, 2020).

Editor's Notes — Laws of 2020, ch. 479, § 1, effective July 8, 2020, provides "SECTION 1. This act [Chapter 479, Laws of 2020] shall be known and may be cited as the Rose Isabel Williams Mental Health Reform act of 2020. The goal of the act is to reform the current Mississippi mental health delivery system so that necessary service, supports and operational structure for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides for a Coordinator of Mental Health Accessibility with the powers and duties set forth in this act."

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1)(a), added "including financial statements" at the end of the second sentence, and added the fifth sentence, in (1)(v), substituted "To ensure" for "To insure," and added (1)(z); and added (3).

OPINIONS OF THE ATTORNEY GENERAL

A regional mental health commission may use incentive programs for its employees, so long as such programs are not based on past services. Jackson, June 29, 1992, A.G. Op. #92-0435.

Authority for mental illness and retardation facilities to enter into contracts for implementation or operation of programs is at Miss. Code Section 41-19-33(e). Jackson, June 11, 1993, A.G. Op. #93-0148.

Financing arrangements for mental illness and retardation facilities, if necessary, are authorized by Miss. Code Section 41-19-33(k). Jackson, June 11, 1993, A.G. Op. #93-0148.

State law does not empower Regional Mental Health Commission created pursuant to Miss. Code Section 41-19-33 to form private corporation. Jackson, June 11, 1993, A.G. Op. #93-0148.

Member of Regional Mental Health Commission presently serving is not prohibited from serving at same time as member of State Board of Mental Health, so long as he does not receive from Regional Mental Health Commission any compensation, including salary, per diem or expenses from funds allocated to it by State Board of Mental Health. Littlejohn Dec. 13, 1993, A.G. Op. #93-0815.

Section 41-19-33 allows regional mental health commissions to borrow money for any authorized purpose of the commission. There is no statutory requirement that the Commission publish notice to obtain bids for financing for the construction of an addition to an existing facility. Littlejohn, May 10, 1995, A.G. Op. #95-0158.

The Region VI Mental Health-Mental Retardation Commission under its broad grant of authority may, but is not required to, provide such benefits as health insurance to its employees and pay the premiums therefore in whole or in part as it deems proper. Oakes, August 28, 1998, A.G. Op. #98-0522.

Simultaneous service on a local school board, the Ethics Commission and a Regional Mental Health Commission is not a violation of Miss. Const., Art. I, § 2. Brown, Jan. 23, 2004, A.G. Op. 04-0012.

A regional commission would not be authorized to make pharmacy services available to an employee who is not a client. Smith, Oct. 27, 2006, A.G. Op. 06-0531, 2006 Miss. AG LEXIS 397; modified as to authority of regional commission to offer pharmacy services to persons other than persons who are clients of the regional commission by Smith, February 9, 2007, A.G. Op. #07-00047, 2007 Miss. AG LEXIS 21.

A county central vehicle repair department may provide repair and maintenance services to a regional mental health center pursuant to an interlocal agreement. Ross, Dec. 8, 2006, A.G. Op. 06-0594.

The Northeast Mental Health-Mental Retardation Commission, Region III, is authorized to provide pharmacy services

to its clients as well as to its employees as a fringe benefit, but not to the general public, as long as such services are authorized by the Mississippi State Board of Pharmacy. Smith, February 9, 2007, A.G. Op. #07-00047, 2007 Miss. AG LEXIS 21 (modifying Smith, A.G. Op. #06-00531, 2006 Miss. AG LEXIS 397).

§ 41-19-39. Financial support for facilities or services for individuals with mental illness or intellectual disability; tax levy.

OPINIONS OF THE ATTORNEY GENERAL

Since the regional mental health commission was selected by boards of supervisors of various counties in region and members were appointed by such boards, commission may invest any surplus funds as directed by Section 19-9-29. Stewart, Sept. 17, 1992, A.G. Op. #92-0672.

Section 41-19-39 is sufficiently broad to allow county to contribute real estate, as well as funds, to mental health commission which county supports. Leggett, Feb. 9, 1994, A.G. Op. #93-1023.

CHAPTER 20.

MENTAL HEALTH ACCESSIBILITY.

§ 41-20-1. Definitions.

As used in this chapter the following terms shall have the following meanings, unless the context clearly indicates a different meaning:

(a) "Community mental health center" means a facility authorized under Section 41-19-33.

(b) "Mental health services" includes all services offered by the mental health system in Mississippi, including, but not limited to, the following:

(i) Community mental health services, including:

1. Programs of assertive community treatment;
2. Mobile crisis response services;
3. Crisis stabilization units;
4. Community support services;

5. Peer support services;
6. Supported employment; and
7. Permanent supported housing; and

(ii) Institutional mental health services, which are services that encompass civil commitment or hospitalization in a psychiatric hospital;

(iii) Mental health services provided in facilities authorized in Title 47, Mississippi Code of 1972;

(iv) Core adult mental health services;

(v) Child mental health services;

(vi) Intellectual/developmental disability services;

(vii) Substance abuse prevention and treatment/rehabilitation services; and

(viii) Any combination of the services defined in this paragraph (b).

(c) "Mental health system" means the facilities, institutions, centers, entities, persons and providers that provide mental health services in Mississippi.

(d) "Regional commission" means a commission established in Section 41-19-33.

HISTORY: Laws, 2020, ch. 479, § 2, eff from and after passage (approved July 8, 2020).

Editor's Notes — Laws of 2020, ch. 479, § 1, effective July 8, 2020, provides "SECTION 1. This act [Chapter 479, Laws of 2020] shall be known and may be cited as the Rose Isabel Williams Mental Health Reform act of 2020. The goal of the act is to reform the current Mississippi mental health delivery system so that necessary service, supports and operational structure for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides for a Coordinator of Mental Health Accessibility with the powers and duties set forth in this act."

§ 41-20-3. Coordinator of Mental Health Accessibility; appointment; qualifications.

(1) There is created within the Department of Finance and Administration a position to be known as the Coordinator of Mental Health Accessibility. The coordinator shall be appointed by the Executive Director of the Department of Finance and Administration and shall serve at the will and pleasure of the executive director. The executive director shall appoint the coordinator within thirty (30) days from July 8, 2020.

(2) The coordinator must have a master's degree, doctoral degree or juris doctorate from an accredited institution of higher learning and have not less than five (5) years of professional experience.

(3) The coordinator shall be housed at the Department of Finance and Administration. All of the expenses of the coordinator, including the coordinator's salary and the salaries of any staff of the coordinator, shall be paid out of funds appropriated to the Department of Finance and Administration.

HISTORY: Laws, 2020, ch. 479, § 3, eff from and after passage (approved July 8, 2020); Laws, 2021, SB2021, § 1, eff from and after passage (approved February 8, 2021).

Editor's Notes — Laws of 2020, ch. 479, § 1, effective July 8, 2020, provides "SECTION 1. This act [Chapter 479, Laws of 2020] shall be known and may be cited as the Rose Isabel Williams Mental Health Reform act of 2020. The goal of the act is to reform the current Mississippi mental health delivery system so that necessary service, supports and operational structure for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides for a Coordinator of Mental Health Accessibility with the powers and duties set forth in this act."

Laws of 2021, ch. 399, § 13, effective March 25, 2021, provides: "SECTION 13. On or before December 1, 2021, each existing health care facility with child/adolescent psychiatric or child/adolescent chemical dependency beds shall file with the Mississippi Department of Health, the Mississippi Department of Mental Health and the Coordinator of Mental Health Accessibility a description of their plan to help their patients remain in noninstitutional settings when practical. This plan may include coordination with the community mental health centers and other providers. The plan need not be detailed or lengthy, but it shall set forth efforts to ensure the facility is coordinating with other entities."

Amendment Notes — The 2021 amendment, effective February 8, 2021, in (3), substituted "Department of Finance and Administration" for "State Department of Mental Health" twice.

§ 41-20-5. Powers and duties of coordinator.

The coordinator shall have the following powers and duties:

(a) To perform a comprehensive review of Mississippi's mental health system to determine whether mental health services, including community mental health services, are offered in each county and available to the entire population of each county, especially to those with serious and persistent mental illness.

(b) To analyze and review the structure of the mental health system.

(c) To review the adequacy and quality of the individualized supports and services provided to persons discharged from the state hospitals or to persons at risk of institutionalization throughout the state.

(d) To review the quarterly financial statements and status reports of the individual community mental health centers described in Section 41-19-33(3)(b).

(e) To consult with the Special Master appointed in the *United States of America v. State of Mississippi*, No. 3:16-CV-622-CWR-FKB (S.D. Miss. Feb. 25, 2020) or any monitor or other person appointed by the court, the State Department of Mental Health, the Division of Medicaid, the State Department of Rehabilitation Services, the State Department of Health, county boards of supervisors, regional commissions, community mental health centers, mental health advocates, community leaders and any other necessary parties or entities, both private and governmental, regarding the status of the services offered by Mississippi's mental health system.

(f) To determine where in any county, or geographic area within a county, the delivery or availability of mental health services are inadequate.

(g) To determine whether each community mental health center has sufficient funds to provide the required mental health services.

(h) To report on the status of the mental health system quarterly to the Governor, the Lieutenant Governor, the Speaker of the House, the State Department of Mental Health, the regional commissions, the Division of Medicaid, the State Department of Rehabilitative Services, the State Department of Health, the Department of Finance and Administration, the PEER Committee and the Legislative Budget Office. The coordinator shall deliver the quarterly status report to the Secretary of the Senate and the Clerk of the House, who shall disseminate the report to the appropriate members.

(i) In addition to the quarterly report required by paragraph (h), to provide the PEER Committee each quarter with a financial report, assessment and review of each community mental health region and the services provided by the region, together with findings by the coordinator on other relevant matters relating to the region. The State Department of Mental Health and the regional commissions shall cooperate with the PEER Committee in its assessment and review of the community mental health regions and shall provide the committee with all necessary information and documentation as requested by the committee.

HISTORY: Laws, 2020, ch. 479, § 4, eff from and after passage (approved July 8, 2020).

Editor's Notes — Laws of 2020, ch. 479, § 1, effective July 8, 2020, provides "SECTION 1. This act [Chapter 479, Laws of 2020] shall be known and may be cited as the Rose Isabel Williams Mental Health Reform act of 2020. The goal of the act is to reform the current Mississippi mental health delivery system so that necessary service, supports and operational structure for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides for a Coordinator of Mental Health Accessibility with the powers and duties set forth in this act."

§ 41-20-7. Coordinator authorized to hire staff, enter any part of the mental health system, interview persons and employees in the mental health system, access documents, etc., necessary to assess status of mental health system, recommend changes, and develop and implement plan to provide access to mental health services.

In fulfilling the responsibilities of this chapter, the coordinator may, subject to federal law:

(a) Hire staff needed for the performance of his or her duties under this chapter, subject to the approval of the Executive Director of the Department

of Finance and Administration and provided that funds are specifically appropriated for that purpose.

(b) Enter any part of the mental health system, including any facility or building used to provide mental health services.

(c) Interview, on a confidential basis or otherwise, persons and employees in the mental health system.

(d) Access services, documents, records, programs and materials as necessary to assess the status of the mental health system.

(e) Recommend changes to any portion of the mental health system either in the coordinator's status reports or to the board(s) of supervisors or regional commissions or to the State Department of Mental Health or as otherwise determined to be necessary by the coordinator.

(f) Develop and implement a plan to provide access to mental health services in any county or geographic area within a county, where services are determined to be inadequate, if required by Section 41-20-9.

(g) Communicate with any governmental entity as is necessary to fulfill the coordinator's duties under this chapter.

(h) Perform any other actions as the coordinator deems necessary to fulfill the coordinator's duties under this chapter.

HISTORY: Laws, 2020, ch. 479, § 5, eff from and after passage (approved July 8, 2020); Laws, 2021, SB2021, § 2, eff from and after passage (approved February 8, 2021).

Editor's Notes — Laws of 2020, ch. 479, § 1, effective July 8, 2020, provides "SECTION 1. This act [Chapter 479, Laws of 2020] shall be known and may be cited as the Rose Isabel Williams Mental Health Reform act of 2020. The goal of the act is to reform the current Mississippi mental health delivery system so that necessary service, supports and operational structure for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides for a Coordinator of Mental Health Accessibility with the powers and duties set forth in this act."

Amendment Notes — The 2021 amendment, effective February 8, 2021, in (a), substituted "Department of Finance and Administration" for "State Department of Mental Health" and deleted the former last two sentences, which read: "The State Department of Mental Health, upon request from the coordinator, may supplement the staff of the coordinator. The coordinator shall have full control over any staff hired and any staff provided by the department under this paragraph (a)."

§ 41-20-9. Coordinator's duties upon determination of inadequate mental health services in county or geographic area within county.

(1) When the coordinator determines that a county or a geographic area within a county offers inadequate mental health services, the coordinator shall inform the board(s) of supervisors and the regional commission of the geographic areas where the services are inadequate.

(2) When the coordinator determines services are inadequate, the coordinator shall determine if there is a plan in place or a plan being developed to

increase access to mental health services in that county or the geographic area within the county where mental health services are inadequate and shall assess the viability of the plan, including its sufficiency to address the inadequacy of the available mental health services.

(3) If there is no plan in place or being developed, the coordinator may allow the county board of supervisors or the regional commission a reasonable time to develop and implement a plan.

(4) If the coordinator determines that the plan is or will be insufficient to provide mental health services to the population of the county or the geographic area within the county where the services are inadequate, the coordinator shall develop and implement a plan to facilitate increased access to mental health services in the county or geographic area by:

(a) First meeting with the board of supervisors of the county in which the mental health services are inadequate and the regional commission in which the county is located to explain in detail the possible consequences of the failure of the county and commission to address the inadequacy of the available mental health services in the county or the geographic area within the county, which shall include putting the regional commission on probation and ultimately decertifying the commission. Then the coordinator shall work with one or more of the regional commissions that are adjacent to the county or the geographic area within the county where the mental health services are inadequate to determine if one of those regional commissions is willing to provide those services in the county or geographic area, and if a regional commission is willing to do so, the coordinator shall take all necessary steps to facilitate the transfer of the responsibility of providing those services to that regional commission; or

(b) If no regional commission adjacent to the county or the geographic area within the county where the mental health services are inadequate is willing to provide those services in the county or geographic area, then working with one or more of the regional commissions that are not adjacent to the county or geographic area to determine if one of those regional commissions is willing to provide those services in the county or geographic area.

(5) If the coordinator determines that no regional commission in the state is willing to provide the necessary mental health services in the county or the geographic area within the county where the services are inadequate, the coordinator shall notify the State Board of Mental Health. Within a reasonable time after receiving such notice from the coordinator, the board shall issue a request for proposals to obtain public or private providers of mental health services to provide the necessary mental health services in the county or the geographic area within the county where the services are inadequate. The request for proposals process followed by the board to obtain those services shall not be subject to the rules, regulations or approval of the Public Procurement Review Board.

HISTORY: Laws, 2020, ch. 479, § 6, eff from and after passage (approved July 8, 2020).

Editor's Notes — Laws of 2020, ch. 479, § 1, effective July 8, 2020, provides "SECTION 1. This act [Chapter 479, Laws of 2020] shall be known and may be cited as the Rose Isabel Williams Mental Health Reform act of 2020. The goal of the act is to reform the current Mississippi mental health delivery system so that necessary service, supports and operational structure for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides for a Coordinator of Mental Health Accessibility with the powers and duties set forth in this act."

§ 41-20-11. Cooperation with coordinator; coordinator's access to mental health system, services and documents, persons employed by or receiving services.

The State Department of Mental Health, the regional commissions, the Division of Medicaid, the State Department of Rehabilitation Services, the State Department of Health, the PEER Committee, and the Legislative Budget Office shall cooperate with the coordinator under this chapter and shall allow the coordinator or his or her staff to, as it relates to the performing of his or her duties:

(a) Enter any part of the mental health system, including any facility or building used to provide mental health services;

(b) Interview any person employed by or receiving services from the respective entity; and

(c) Access services, documents, records, programs and materials as necessary to assess the status of the mental health system.

HISTORY: Laws, 2020, ch. 479, § 7, eff from and after passage (approved July 8, 2020).

Editor's Notes — Laws of 2020, ch. 479, § 1, effective July 8, 2020, provides "SECTION 1. This act [Chapter 479, Laws of 2020] shall be known and may be cited as the Rose Isabel Williams Mental Health Reform act of 2020. The goal of the act is to reform the current Mississippi mental health delivery system so that necessary service, supports and operational structure for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides for a Coordinator of Mental Health Accessibility with the powers and duties set forth in this act."

CHAPTER 21.

INDIVIDUALS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY

IN GENERAL

§§ 41-21-1 through 41-21-29. Repealed.

Editor's Notes — Laws of 2020, ch. 403, § 1, effective June 29, 2020, provides:

SECTION 1. (1) There is hereby created an advisory committee on jail census data collection to promote criminal justice transparency by promulgating criteria to facilitate the availability of comparable and uniform data. The duties of the advisory committee are as follows:

(a) Research the standards, format, and terminology used by authorities in other states and by the federal government to create uniform data-reporting regulations to be used for recording data on offenders incarcerated in the state's county jails and which will capture the following data:

(i) The number of individuals detained for a new offense or delinquent act.

(ii) The number of individuals detained pending trial.

(iii) The number of offenders detained for a revocation of supervision.

(iv) The average sentence length for new jail sentences by offense type.

(v) The average sentence length for offenders in jail for a probation revocation.

(vi) The average sentence length for offenders in jail for a parole revocation.

(vii) The percentage of sentences in each category offense type, including whether the offense was a violent, property, drug, or public order offense. All drug offenses must include the type of drug implicated in the offense, as well as type of offense, such as possession, sale or manufacture.

(viii) The average length of stay by offense type.

(ix) For individuals awaiting trial, the average length of stay from the time of arrest to the time of indictment, and from the time of indictment to trial.

(b) Research best practices for implementing a centralized database for reporting of the prescribed jail census data by each county authority and recommend a timeline for the submission of the data.

(c) Recommend computer equipment and acceptable electronic processes for transmission of the data by each county to the Administrative Office of Courts.

(d) The committee shall submit its report to the Legislature no later than December 1, 2020.

(2) The committee shall be composed of five (5) members, as follows:

(a) The Commissioner of Corrections or acting Commissioner of Corrections or a designee; .

(b) The State Public Defender or a designee;

(c) The President of the Mississippi Prosecutors Association or a designee;

(d) The President of the Mississippi Sheriffs' Association or a designee; and

(e) A circuit court judge appointed by the Chief Justice of the Supreme Court.

(3) Appointments must be made within thirty (30) days after the effective date of this act. No later than AUGUST 15, 2020, the committee must meet and organize by selecting from its membership a chairman and a vice chairman. The vice chairman shall also serve as secretary and is responsible for keeping all records of the committee. A majority of the members of the task force constitutes a quorum. In the selection of its officers and the adoption of rules, resolutions and reports, an affirmative vote of a majority of the task force is required. All members must be notified in writing of all meetings, and those notices shall be mailed at least fifteen (15) days before the date on which a meeting is to be held.

(4) The Performance Evaluation and Expenditure Review Committee shall provide necessary staff support and the executive director shall coordinate the calling of the first meeting of the committee.

PERSONS IN NEED OF MENTAL TREATMENT

Sec.

§ 41-21-61. Definitions.

As used in Sections 41-21-61 through 41-21-107, unless the context otherwise requires, the following terms defined have the meanings ascribed to them:

(a) "Appointed examiner" means a person appointed by the court under Section 41-21-67(2) to conduct a mental and physical examination of a person alleged to be in need of treatment.

(b) "Chancellor" means a chancellor or a special master in chancery.

(c) "Clerk" means the clerk of the chancery court.

(d) "Director" means the chief administrative officer of a treatment facility or other employee designated by him as his deputy.

(e) "Interested person" means an adult, including, but not limited to, a public official, and the legal guardian, spouse, parent, legal counsel, adult child, next of kin, or other person designated by a proposed patient.

(f) "Person with mental illness" means any person who has a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which (i) is manifested by instances of grossly disturbed behavior or faulty perceptions; and (ii) poses a substantial likelihood of physical harm to himself or others as demonstrated by (A) a

recent attempt or threat to physically harm himself or others, or (B) a failure to provide necessary food, clothing, shelter or medical care for himself, as a result of the impairment. "Person with mental illness" includes a person who, based on treatment history and other applicable psychiatric indicia, is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness to himself or others when his current mental illness limits or negates his ability to make an informed decision to seek or comply with recommended treatment. "Person with mental illness" does not include a person having only one or more of the following conditions: (1) epilepsy, (2) an intellectual disability, (3) brief periods of intoxication caused by alcohol or drugs, (4) dependence upon or addiction to any alcohol or drugs, or (5) senile dementia.

(g) "Person with an intellectual disability" means any person (i) who has been diagnosed as having substantial limitations in present functioning, manifested before age eighteen (18), characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two (2) or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, and (ii) whose recent conduct is a result of having an intellectual disability and poses a substantial likelihood of physical harm to himself or others in that there has been (A) a recent attempt or threat to physically harm himself or others, or (B) a failure and inability to provide necessary food, clothing, shelter, safety or medical care for himself.

(h) "Physician" means any person licensed by the State of Mississippi to practice medicine in any of its branches.

(i) "Psychologist" means a licensed psychologist who has been certified by the State Board of Psychological Examiners as qualified to perform examinations for the purpose of civil commitment.

(j) "Treatment facility" means a hospital, community mental health center, or other institution qualified to provide care and treatment for persons with mental illness, persons with an intellectual disability or chemically dependent persons.

(k) "Substantial likelihood of bodily harm" means that:

(i) The person has threatened or attempted suicide or to inflict serious bodily harm to himself; or

(ii) The person has threatened or attempted homicide or other violent behavior; or

(iii) The person has placed others in reasonable fear of violent behavior and serious physical harm to them; or

(iv) The person is unable to avoid severe impairment or injury from specific risks; and

(v) There is substantial likelihood that serious harm will occur unless the person is placed under emergency treatment.

HISTORY: Laws, 1975, ch. 492, § 1; Laws, 1976, ch. 401, § 2; Laws, 1984, ch. 477, § 1; Laws, 1985, ch. 454, § 1; Laws, 1994, ch. 533, § 1; Laws, 1994, ch. 599, § 1; Laws, 2010, ch. 476, § 58; Laws, 2010, ch. 548, § 1, eff from and after July 1, 2010; Laws, 2019, ch. 468, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added (a), and redesignated former (a) through (j) as (b) through (k); deleted "when used in Sections 41-21-61 through 41-21-107" following "Psychologist" in (i); and made minor stylistic changes.

OPINIONS OF THE ATTORNEY GENERAL

Commitment proceeding is specialized litigation; $75 is fee, if affiant is able to pay same. Jones Nov. 10, 1993, A.G. Op. #93-0514.

There is no specific procedure outlined in Sections 41-21-61, et seq. regarding court orders to require committed patient to take medication; such a proceeding would be similar to procedures delineated in Sections 41-21-81 and 41-21-99 and burden to obtain order would be upon treatment facility, and not on local authorities in originating jurisdiction. Zachary, March 2, 1994, A.G. Op. #94-0068.

There is no indication that Sections 41-30-1 et seq. and Sections 41-21-61 et seq. are in anyway interchangeable and to admit or commit individual under mistaken statutory provision is denial of due process rights. Presley, March 3, 1994, A.G. Op. #93-0999.

Senate Bill 2339 of 2005 [Chapter 501, Laws of 2005] does not, by its express terms, amend, modify or repeal Sections 9-5-255 and 41-21-61 (a). Miller, Aug. 2, 2005, A.G. Op. 05-0206.

§ 41-21-63. Commitment proceedings; jurisdiction of chancery court and circuit court.

(1) No person, other than persons charged with crime, shall be committed to a public treatment facility except under the provisions of Sections 41-21-61 through 41-21-107 or 43-21-611 or 43-21-315. However, nothing herein shall be construed to repeal, alter or otherwise affect the provisions of Section 35-5-31 or to affect or prevent the commitment of persons to the Veterans Administration or other agency of the United States under the provisions of and in the manner specified in those sections.

(2)(a) The chancery court, or the chancellor in vacation, shall have jurisdiction under Sections 41-21-61 through 41-21-107 except over persons with unresolved felony charges unless paragraph (b) of this subsection applies.

(b) If a circuit court with jurisdiction over unresolved felony charges enters an order concluding that the person is incompetent to stand trial and is not restorable to competency in the foreseeable future, the matter should be referred to the chancery court to be subject to civil commitment procedures under Sections 41-21-61 through 41-21-107. The order of the circuit court shall be in lieu of the affidavit for commitment provided for in Section 41-21-65. The chancery court shall have jurisdiction and shall proceed with civil commitment procedures under Sections 41-21-61 through 41-21-107.

(3) The circuit court shall have jurisdiction under Sections 99-13-7, 99-13-9 and 99-13-11.

(4) Before the release of a person referred for civil commitment under this

section and committed under Sections 41-21-61 through 41-21-107, the Department of Mental Health must notify the district attorney of the county where the offense was committed. The district attorney must notify the crime victim or a family member who has requested notification under Section 99-43-35 and the sheriffs of both the county where the offense was committed and the county of the committed person's destination.

HISTORY: Laws, 1975, ch. 492, § 2; Laws, 1976, ch. 401, § 3; Laws, 1984, ch. 477, § 2; Laws, 1985, ch. 454, § 6; Laws, 1994, ch. 533, § 1; Laws, 1994, ch. 599, § 2; Laws, 1996, ch. 430, § 2; Laws, 2010, ch. 398, § 2, eff from and after July 1, 2010; Laws, 2019, ch. 468, § 4, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added (2)(b) and (4); and substituted "charges unless paragraph (b) of this subsection applies" for "charges pending" at the end of (2)(a).

OPINIONS OF THE ATTORNEY GENERAL

Section 41-21-63(3) limits the circuit court's jurisdiction in commitment proceedings to persons indicted and charged with felonies; consequently, there is no prohibition against the chancery court asserting jurisdiction in civil commitment proceedings where there are unresolved misdemeanor charges pending against the mentally ill person. McKenzie, October 24, 1995, A.G. Op. #95-0217.

Under Section 43-21-611, the youth court would have original jurisdiction over commitment of a mentally ill juvenile only where that juvenile is already in youth court jurisdiction as abused, neglected, delinquent, in need of supervision or dependent. Jurisdiction over commitment proceedings for adults and for all other juveniles would be in chancery court pursuant to Section 41-21-63. Floyd, March 29, 1996, A.G. Op. #96-0148.

§ 41-21-65. Affidavit for commitment; simplified affidavit form; use of Uniform Civil Commitment Affidavit to commence civil commitment proceedings; development of written Uniform Civil Commitment Guide outlining steps in commitment process.

(1) It is the intention of the Legislature that the filing of an affidavit under this section be a simple, inexpensive, uniform, and streamlined process for the purpose of facilitating and expediting the care of individuals in need of treatment.

(2) The Uniform Civil Commitment Affidavit developed by the Department of Mental Health under this section must be provided by the clerk of the chancery court to any party or affiant seeking a civil commitment under this section, and must be utilized in all counties to commence civil commitment proceedings under this section. The affidavit must be made available to the public on the website of the Mississippi Department of Mental Health.

(3) The Department of Mental Health, in consultation with the Mississippi Chancery Clerks Association, the Mississippi Conference of Chancery Court Judges and the Mississippi Association of Community Mental Health Centers, must develop a written guide setting out the steps in the commitment

process no later than January 1, 2020. The guide shall be designated as the "Uniform Civil Commitment Guide" and must include, but not be limited to, the following:

(a) Steps in the civil commitment process from affidavit to commitment, written in easily understandable layman's terms;

(b) A schedule of fees and assessments that will be charged to commence a commitment proceeding under this section;

(c) Eligibility requirements and instructions for filing a pauper's affidavit; and

(d) A statement on the front cover of the guide advising that persons wishing to pursue a civil commitment under this section are not required to retain an attorney for any portion of the commitment process.

(4) Immediately upon availability, but no later than January 1, 2020, the Uniform Civil Commitment Guide must be provided by the clerk of the chancery court to any party or affiant seeking a civil commitment under this section and also must be made available to the public on the website of the Mississippi Department of Mental Health.

(5) If any person is alleged to be in need of treatment, any relative of the person, or any interested person, may make affidavit of that fact and shall file the Uniform Civil Commitment Affidavit with the clerk of the chancery court of the county in which the person alleged to be in need of treatment resides, but the chancellor or duly appointed special master may, in his or her discretion, hear the matter in the county in which the person may be found. The affidavit shall set forth the name and address of the proposed patient's nearest relatives and whether the proposed patient resides or has visitation rights with any minor children, if known, and the reasons for the affidavit. The affidavit must contain factual descriptions of the proposed patient's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred, if known. Each factual allegation may be supported by observations of witnesses named in the affidavit. The Department of Mental Health, in consultation with the Mississippi Chancery Clerks' Association, shall develop a simple, one-page affidavit form for the use of affiants as provided in this section. The affidavit also must state whether the affiant has consulted with a Community Mental Health Center or a physician to determine whether the alleged acts by the proposed respondent warrant civil commitment in lieu of other less-restrictive treatment options. No chancery clerk shall require an affiant to retain an attorney for the filing of an affidavit under this section.

(6) The chancery clerk may charge a total filing fee for all services equal to the amount set out in Section 25-7-9(o), and the appropriate state and county assessments as required by law which include, but are not limited to, assessments for the Judicial Operation Fund (Section 25-7-9(3)(b)); the Electronic Court System Fund (Section 25-7-9(3)(a)); the Civil Legal Assistance Fund (Section 25-7-9(1)(k)); the Court Education and Training Fund (Section 37-26-3); State Court Constituent's Fund (Section 37-26-9(4)); and reasonable court reporter's fee. Costs incidental to the court proceedings as set forth in

Section 41-21-79 may not be included in the assessments permitted by this subsection. The total of the fees and assessments permitted by this subsection may not exceed One Hundred Fifty Dollars ($150.00).

(7) The prohibition against charging the affiant other fees, expenses, or costs shall not preclude the imposition of monetary criminal penalties under Section 41-21-107 or any other criminal statute, or the imposition by the chancellor of monetary penalties for contempt if the affiant is found to have filed an intentionally false affidavit or filed the affidavit in bad faith for a malicious purpose.

(8) Nothing in this section shall be construed so as to conflict with Section 41-21-63.

HISTORY: Laws, 1975, ch. 492, § 3(1); Laws, 1984, ch. 477, § 3; Laws, 2004, ch. 565, § 1; Laws, 2009, ch. 525, § 1; Laws, 2010, ch. 398, § 3; Laws, 2014, ch. 448, § 1, eff from and after July 1, 2014; Laws, 2019, ch. 468, § 5, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added (2) through (4) and (8), and redesignated former (2) through (4) as (5) through (7); in (5), in the first sentence, inserted "Uniform Civil Commitment" and substituted "but the chancellor" for "provided, however, that a chancellor," deleted the former second sentence, which read: "The chancellor is authorized to immediately transfer the cause of a person alleged to be in need of treatment from the county where the person was found to the person's county of residence," deleted the former sixth sentence, which read: "Because of the emergency nature of those affidavits, at the affiant's request the chancery clerk shall provide the affiant with the one-page affidavit form developed by the Department of Mental Health, which the affiant may complete and file without the need for consulting or retaining an attorney," substituted "this section" for "this subsection, which shall be used in all counties in the state" at the end of the present fifth sentence, and added the next-to-last sentence; and in (6), in the first sentence, substituted "charge a total filing fee" for "charge the affiant a total fee" and added "which include, but are not limited to...reasonable court reporter's fee" at the end, and added the last two sentences.

OPINIONS OF THE ATTORNEY GENERAL

Chancellor, rather than Clerk, must make decision on whether or not to have person in need of treatment taken into custody under statute; clerk may not refuse to accept affidavit filed by any person under this section. Crumpton, July 2, 1992, A.G. Op. #92-0484.

This section permits family members of a person in need of treatment to file the required affidavit in the chancery court of the county of residence of that person. If the person in need of treatment is in the custody of the sheriff in another county, pursuant to § 41-21-67 the chancery court judge of the county of residence of such person has the authority to have the clerk issue a writ to the sheriff of the county where such person is in custody to have the person transported to the clerk or chancellor of the person's county of residence. Alternatively, § 41-21-67 also authorizes the writ to be directed to the sheriff of the county of residence of the person in need of treatment. If the writ is directed to the sheriff of a foreign county, then the sheriff may recover the costs of transportation from the county of residence of the person in need of treatment as provided in § 41-21-79. Morrow, Nov. 5, 2004, A.G. Op. 04-0540.

No authority can be found for a municipality to voluntarily pay the costs to initiate civil commitment proceedings on behalf of a prisoner which are the statutory

responsibility of the individual or county of residence. Blakley, Aug. 25, 2006, A.G. Op. 06-0383.

§ 41-21-67. Person to be taken into custody; community mental health center as first point of entry for pre-evaluation screening and treatment; referral to crisis intervention team; appointment of examining physicians, or physician and psychologist, nurse practitioner or physician assistant; appointment of attorney; emergency patient status; notification to Department of Child Protection Services of possible danger to minor child under certain circumstances.

(1) Whenever the affidavit provided for in Section 41-21-65 is filed with the chancery clerk, the clerk, upon direction of the chancellor of the court, shall issue a writ directed to the sheriff of the proper county to take into custody the person alleged to be in need of treatment and to take the person for pre-evaluation screening and treatment by the appropriate community mental health center established under Section 41-19-31. The community mental health center will be designated as the first point of entry for pre-evaluation screening and treatment. If the community mental health center is unavailable, any reputable licensed physician, psychologist, nurse practitioner or physician assistant, as allowed in the discretion of the court, may conduct the pre-evaluation screening and examination as set forth in Section 41-21-69. The order may provide where the person shall be held before being taken for pre-evaluation screening and treatment. However, when the affidavit fails to set forth factual allegations and witnesses sufficient to support the need for treatment, the chancellor shall refuse to direct issuance of the writ. Reapplication may be made to the chancellor. If a pauper's affidavit is filed by an affiant who is a guardian or conservator of a person in need of treatment, the court shall determine if either the affiant or the person in need of treatment is a pauper and if, the affiant or the person in need of treatment is determined to be a pauper, the county of the residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state.

In any county in which a Crisis Intervention Team has been established under the provisions of Sections 41-21-131 through 41-21-143, the clerk, upon the direction of the chancellor, may require that the person be referred to the Crisis Intervention Team for appropriate psychiatric or other medical services before the issuance of the writ.

(2) Upon issuance of the writ, the chancellor shall immediately appoint and summon two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant to conduct a physical and mental examination of the person at a place to be designated by the clerk or chancellor and to report their

findings to the clerk or chancellor. However, any nurse practitioner or physician assistant conducting the examination shall be independent from, and not under the supervision of, the other physician conducting the examination. A nurse practitioner or psychiatric nurse practitioner conducting an examination under this chapter must be functioning within a collaborative or consultative relationship with a physician as required under Section 73-15-20(3). In all counties in which there is a county health officer, the county health officer, if available, may be one (1) of the physicians so appointed. If a licensed physician is not available to conduct the physical and mental examination within forty-eight (48) hours of the issuance of the writ, the court, in its discretion and upon good cause shown, may permit the examination to be conducted by the following: (a) two (2) nurse practitioners, one (1) of whom must be a psychiatric nurse practitioner; or (b) one (1) psychiatric nurse practitioner and one (1) psychologist or physician assistant. Neither of the physicians nor the psychologist, nurse practitioner or physician assistant selected shall be related to that person in any way, nor have any direct or indirect interest in the estate of that person nor shall any full-time staff of residential treatment facilities operated directly by the State Department of Mental Health serve as examiner.

(3) The clerk shall ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk shall immediately notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor shall immediately appoint an attorney for the respondent at the time the examiners are appointed.

(4) If the chancellor determines that there is probable cause to believe that the respondent is mentally ill and that there is no reasonable alternative to detention, the chancellor may order that the respondent be retained as an emergency patient at any licensed medical facility for evaluation by a physician, nurse practitioner or physician assistant and that a peace officer transport the respondent to the specified facility. If the community mental health center serving the county has partnered with Crisis Intervention Teams under the provisions of Sections 41-21-131 through 41-21-143, the order may specify that the licensed medical facility be a designated single point of entry within the county or within an adjacent county served by the community mental health center. If the person evaluating the respondent finds that the respondent is mentally ill and in need of treatment, the chancellor may order that the respondent be retained at the licensed medical facility or any other available suitable location as the court may so designate pending an admission hearing. If necessary, the chancellor may order a peace officer or other person to transport the respondent to that facility or suitable location. Any respondent so retained may be given such treatment as is indicated by standard medical practice. However, the respondent shall not be held in a hospital operated directly by the State Department of Mental Health, and shall not be held in jail unless the court finds that there is no reasonable alternative.

(5)(a) Whenever a licensed psychologist, nurse practitioner or physician assistant who is certified to complete examinations for the purpose of

commitment or a licensed physician has reason to believe that a person poses an immediate substantial likelihood of physical harm to himself or others or is gravely disabled and unable to care for himself by virtue of mental illness, as defined in Section 41-21-61(e), then the physician, psychologist, nurse practitioner or physician assistant may hold the person or may admit the person to and treat the person in a licensed medical facility, without a civil order or warrant for a period not to exceed seventy-two (72) hours. However, if the seventy-two-hour period begins or ends when the chancery clerk's office is closed, or within three (3) hours of closing, and the chancery clerk's office will be continuously closed for a time that exceeds seventy-two (72) hours, then the seventy-two-hour period is extended until the end of the next business day that the chancery clerk's office is open. The person may be held and treated as an emergency patient at any licensed medical facility, available regional mental health facility, or crisis intervention center. The physician or psychologist, nurse practitioner or physician assistant who holds the person shall certify in writing the reasons for the need for holding.

If a person is being held and treated in a licensed medical facility, and that person decides to continue treatment by voluntarily signing consent for admission and treatment, the seventy-two-hour hold may be discontinued without filing an affidavit for commitment. Any respondent so held may be given such treatment as indicated by standard medical practice. Persons acting in good faith in connection with the detention and reporting of a person believed to be mentally ill shall incur no liability, civil or criminal, for those acts.

(b) Whenever an individual is held for purposes of receiving treatment as prescribed under paragraph (a) of this subsection, and it is communicated to the mental health professional holding the individual that the individual resides or has visitation rights with a minor child, and if the individual is considered to be a danger to the minor child, the mental health professional shall notify the Department of Child Protection Services prior to discharge if the threat of harm continues to exist, as is required under Section 43-21-353.

This paragraph (b) shall be known and may be cited as the "Andrew Lloyd Law."

HISTORY: Laws, 1975, ch. 492, § 3(2, 3); Laws, 1984, ch. 477, § 4; Laws, 1985, ch. 454, § 2; Laws, 1994, ch. 533, § 3; Laws, 1994, ch. 599, § 3; Laws, 2000, ch. 493, § 1; Laws, 2008, ch. 513, § 1; Laws, 2010, ch. 398, § 4; Laws, 2010, ch. 476, § 59; Laws, 2010, ch. 548, § 2; Laws, 2014, ch. 351, § 1; Laws, 2014, ch. 448, § 2, eff from and after July 1, 2014; Laws, 2019, ch. 468, § 6, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (1), in the first paragraph, substituted "take the person for pre-evaluation" for "bring the person before the clerk or chancellor, who shall order pre-evaluation" in the first sentence, inserted "pre-evaluation" in the second sentence, substituted "being taken for pre-evaluation screening and treatment" for "the appearance before the clerk or chancellor" in the fourth sentence, and rewrote the last sentence, which read: "If a pauper's affidavit is filed by a guardian for commitment of the ward of the guardian, the court shall determine if the ward is a pauper and if the ward is determined to be a pauper, the county of the

residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state"; in (2), added the third and fifth sentences; and in (5)(b), substituted "Department of Child Protection Services" for "Department of Human Services" in the first paragraph, and inserted "(b)" in the last paragraph.

OPINIONS OF THE ATTORNEY GENERAL

If Chancellor determines that there is probable cause to believe that particular person is mentally ill and there is no reasonable alternative to detention, then Chancellor may order that this person be retained "as emergency patient at any available regional mental health facility or any other available suitable location as court may so designate"; such person shall not be held in hospital operated directly by Department of Mental Health and "shall not be held in jail unless court finds that there is no reasonable alternative." Crumpton, July 2, 1992, A.G. Op. #92-0484.

Under Section 41-21-67(4), a mentally ill person awaiting a competency hearing or awaiting admission to a mental institution should not be held in a jail unless the court determines that there is no reasonable alternative. Glennis, July 7, 1995, A.G. Op. #95-0463.

An osteopath qualifies as a "licensed physician" for the purposes of this section and § 41-21-69. Chamberlin, Feb. 17, 2004, A.G. Op. 04-0044.

Section 41-21-65 permits family members of a person in need of treatment to file the required affidavit in the chancery court of the county of residence of that person. If the person in need of treatment is in the custody of the sheriff in another county, pursuant to this section the chancery court judge of the county of residence of such person has the authority to have the clerk issue a writ to the sheriff of the county where such person is in custody to have the person transported to the clerk or chancellor of the person's county of residence. Alternatively, this section also authorizes the writ to be directed to the sheriff of the county of residence of the person in need of treatment. If the writ is directed to the sheriff of a foreign county, then the sheriff may recover the costs of transportation from the county of residence of the person in need of treatment as provided in § 41-21-79. Morrow, Nov. 5, 2004, A.G. Op. 04-0540.

A regional mental health facility may hold individuals for either 72 hours or until the end of the next business day of the chancery clerk's office, in the discretion of the treating physician or psychologist, without exposure to wrongful detention or the like if the longer interpretation is used. Terney, July 29, 2005, A.G. Op. 05-0362.

§ 41-21-69. Examination by appointed examiners; presence of attorney.

(1)(a) The appointed examiners shall immediately make a full inquiry into the condition of the person alleged to be in need of treatment and shall make a mental examination and physical evaluation of the person, and each examiner must make a report and certificate of the findings of all mental and acute physical problems to the clerk of the court. Each report and certificate must set forth the facts as found by the appointed examiner and must state whether the examiner is of the opinion that the proposed patient is suffering a disability defined in Sections 41-21-61 through 41-21-107 and should be committed to a treatment facility. The statement shall include the reasons for that opinion. The examination may be based upon a history provided by the patient and the report and certificate of findings shall include an

identification of all mental and physical problems identified by the examination.

(b) If the appointed examiner finds: (i) the respondent has mental illness; (ii) the respondent is capable of surviving safely in the community with available supervision from family, friends or others; (iii) based on the respondent's treatment history and other applicable medical or psychiatric indicia, the respondent is in need of treatment in order to prevent further disability or deterioration that would result in significant deterioration in the ability to carry out activities of daily living; and (iv) his or her current mental status or the nature of his or her illness limits or negates his or her ability to make an informed decision to seek voluntarily or comply with recommended treatment; the appointed examiners shall so show on the examination report and certification and shall recommend outpatient commitment. The appointed examiners shall also show the name, address and telephone number of the proposed outpatient treatment physician or facility.

(2) The examinations shall be conducted and concluded within forty-eight (48) hours after the order for examination and appointment of attorney, and the certificates of the appointed examiners shall be filed with the clerk of the court within that time, unless the running of that period extends into nonbusiness hours, in which event the certificates must be filed at the beginning of the next business day. However, if the appointed examiners are of the opinion that additional time to complete the examination is necessary, and this fact is communicated to the chancery clerk or chancellor, the clerk or chancellor shall have authority to extend the time for completion of the examination and the filing of the certificate, the extension to be not more than eight (8) hours.

(3) At the beginning of the examination, the respondent shall be told in plain language of the purpose of the examination, the possible consequences of the examination, of his or her right to refuse to answer any questions, and his or her right to have his or her attorney present.

HISTORY: Laws, 1975, ch. 492, § 3(4, 5); Laws, 1984, ch. 477, § 5; Laws, 1985, ch. 454, § 3; Laws, 1994, ch. 533, § 4; Laws, 1994, ch. 599, § 4; Laws, 2008, ch. 513, § 2; Laws, 2010, ch. 476, § 60, eff from and after passage (approved Apr. 1, 2010); Laws, 2019, ch. 468, § 7, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "appointed examiners" or "appointed examiner" for "physicians or physician and psychologist, nurse practitioner or physician assistant" in the first and second sentences of (1)(a), the first (two times) and second sentences of (1)(b), and the first and second sentences of (2); in (1)(a), substituted "and each examiner must make" for "and shall make" and "the findings" for "their findings" in the first sentence, and "Each report and certificate must set forth" for "The report and certificate shall set forth" and "must state whether the examiner" for "shall state whether or not the examiner" in the second sentence; inserted "are" preceding "of the opinion" in the second sentence of (2); and made minor stylistic changes.

OPINIONS OF THE ATTORNEY GENERAL

An osteopath qualifies as a "licensed physician" for the purposes of § 41-21-67 and this section. Chamberlin, Feb. 17, 2004, A.G. Op. 04-0044.

§ 41-21-70. Development of standards for training of psychiatrists and psychologists to perform mental examinations ordered under Section 99-13-11 and MRCrP 12; publication of list of psychiatrists and psychologists so trained.

The Department of Mental Health shall develop standards for the training of psychiatrists and psychologists to perform mental examinations ordered under Section 99-13-11 and Rule 12 of the Rules of Criminal Procedure. The department shall provide training on the standards and maintain and publish a list of psychiatrists and psychologists who have completed training to perform such evaluations.

HISTORY: Laws, 2019, ch. 468, § 1, eff from and after July 1, 2019.

§ 41-21-71. Procedure after examination; release or confinement pending hearing.

If, as a result of the examination, the appointed examiners certify that the person is not in need of treatment, the chancellor or clerk shall dismiss the affidavit without the need for a further hearing. If the chancellor or chancery clerk finds, based upon the appointed examiners' certificates and any other relevant evidence, that the respondent is in need of treatment and the certificates are filed with the chancery clerk within forty-eight (48) hours after the order for examination, or extension of that time as provided in Section 41-21-69, the clerk shall immediately set the matter for a hearing. The hearing shall be set within seven (7) days of the filing of the certificates unless an extension is requested by the respondent's attorney. In no event shall the hearing be more than ten (10) days after the filing of the certificates.

HISTORY: Laws, 1975, ch. 492, § 3(6, 7); Laws, 1976, ch. 401, § 4; Laws, 1984, ch. 477, § 6; Laws, 2008, ch. 513, § 3; Laws, 2010, ch. 398, § 5, eff from and after July 1, 2010; Laws, 2019, ch. 468, § 8, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted "appointed" in the first sentence; in the second sentence, substituted "appointed examiners' certificates" for "physicians' or the physician's and a psychologist's, nurse practitioner's or physician assistant's certificate" and "the certificates are filed" for "that certificate is filed"; and substituted "certificates" for "certificate" in the next-to-last and last sentences.

§ 41-21-73. Procedures for hearing; evidence; witnesses; commitment; disposition and findings.

OPINIONS OF THE ATTORNEY GENERAL

From and after July 1, 2004 the county of residence of the person committed is responsible for treatment costs incurred prior to admission to a state-operated facility. Speed, Dec. 10, 2004, A.G. Op. 04-0591.

Chancellors do not have the authority to order a county hospital to provide beds to temporarily hold mentally ill patients while they are awaiting transfer to the Mississippi State Hospital, nor do they have the authority to order that a county hospital provide this service free of charge to the county or the patient. Wilson, Aug. 26, 2005, A.G. Op. 05-0332.

§ 41-21-77. Commitment to state hospital or Veterans Administration facility.

If admission is ordered at a treatment facility, the sheriff, his or her deputy or any other person appointed or authorized by the court shall immediately deliver the respondent to the director of the appropriate facility. Neither the Board of Mental Health or its members, nor the Department of Mental Health or its related facilities, nor any employee of the Department of Mental Health or its related facilities, shall be appointed, authorized or ordered to deliver the respondent for treatment, and no person shall be so delivered or admitted until the director of the admitting institution determines that facilities and services are available. Persons who have been ordered committed and are awaiting admission may be given any such treatment in the facility by a licensed physician as is indicated by standard medical practice. Any county facility used for providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility shall be certified by the State Department of Mental Health under the provisions of Section 41-4-7(kk). No person shall be delivered or admitted to any non-Department of Mental Health treatment facility unless the treatment facility is licensed and/or certified to provide the appropriate level of psychiatric care for persons with mental illness. It is the intent of this Legislature that county-owned hospitals work with regional community mental health/intellectual disability centers in providing care to local patients. The clerk shall provide the director of the admitting institution with a certified copy of the court order, a certified copy of the appointed examiners' certificates, a certified copy of the affidavit, and any other information available concerning the physical and mental condition of the respondent. Upon notification from the United States Veterans Administration or other agency of the United States government, that facilities are available and the respondent is eligible for care and treatment in those facilities, the court may enter an order for delivery of the respondent to or retention by the Veterans Administration or other agency of the United States government, and, in those cases the chief officer to whom the respondent is so delivered or by whom he is retained shall, with respect to the respondent, be vested with the same powers as the director

of the Mississippi State Hospital at Whitfield, or the East Mississippi State Hospital at Meridian, with respect to retention and discharge of the respondent.

HISTORY: Laws, 1975, ch. 492, § 4(7); Laws, 1984, ch. 477, § 9; Laws, 1994, ch. 533, § 7; Laws, 1994, ch. 599, § 7; Laws, 2001, ch. 331, § 2; Laws, 2004, ch. 547, § 1; Laws, 2008, ch. 513, § 4; Laws, 2009, ch. 543, § 2; Laws, 2010, ch. 476, § 62; Laws, 2012, ch. 509, § 2, eff from and after July 1, 2012; Laws, 2019, ch. 468, § 9, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "appointed examiners' certificates" for "physicians' or the physician's and psychologist's, nurse practitioner's or physician assistant's certificate" in the next-to-last sentence.

OPINIONS OF THE ATTORNEY GENERAL

Once a court has ordered an individual placed in the custody of a state treatment facility, that person becomes the state's "burden," which includes the cost of his housing, care, and treatment. Chamberlin, Jan. 23, 2002, A.G. Op. #01-0722.

The burden and responsibility of determining the best interests and treatment of a minor is placed on the entity to which the minor is committed. Providing appropriate care and treatment for a minor who is committed by a court to a treatment facility is the responsibility of the director of that facility. Tillman, Nov. 7, 2003, A.G. Op. 03-0542.

This section requires the director of the admitting facility to assume the responsibility of providing treatment and care for all mentally ill patients, whether minors or adults, who are not immediately admitted to the facility as soon as they are committed. Creekmore, Apr. 16, 2004, A.G. Op. 03-0614.

Chancellors do not have the authority to order a county hospital to provide beds to temporarily hold mentally ill patients while they are awaiting transfer to the Mississippi State Hospital, nor do they have the authority to order that a county hospital provide this service free of charge to the county or the patient. Wilson, Aug. 26, 2005, A.G. Op. 05-0332.

§ 41-21-79. Payment of costs.

The costs incidental to the court proceedings including, but not limited to, court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent in those instances where the patient is indigent unless funds for those purposes are made available by the state. However, if the respondent is not indigent, those costs shall be taxed against the respondent or his or her estate. The total amount that may be charged for all of the costs incidental to the court proceedings shall not exceed Four Hundred Dollars ($400.00). Costs incidental to the court proceedings permitted under this section may not be charged to the affiant nor included in the fees and assessments permitted under Section 41-21-65(6).

HISTORY: Laws, 1975, ch. 492, § 4(8); Laws, 1994, ch. 533, § 8; Laws, 1994, ch. 599, § 8; Laws, 2008, ch. 513, § 5; Laws, 2010, ch. 398, § 6, eff from and after July 1, 2010; Laws, 2019, ch. 468, § 10, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the last sentence.

OPINIONS OF THE ATTORNEY GENERAL

The statute places the responsibility for the expenses of medication administered to a person housed in a county detention center to await admission to a mental institution upon the county in which the detained person usually resides. Entrekin, September 4, 1998, A.G. Op. #98-0561.

Medication expenses for a person housed in a county detention center to await admission to a mental institution may be submitted to the Chancery Court to be assessed as costs in the sanity proceedings of a non-indigent person under the statute. Entrekin, September 4, 1998, A.G. Op. #98-0561.

The $75 fee received by chancery clerks in lunacy cases covers all of the normal services that a court clerk would perform with regard to any petition or complaint before the court, but would not include administrative services which seem to be more like services that would be performed by a social worker, such as consultations with family or friends, scheduling physicians, providing insurance information to hospitals, and making arrangements for prescreening and follow-ups, etc.; if the chancery court clerk performs such additional administrative services, the court may allow a reasonable fee over and above the clerk's statutory filing fee. Britt, November 25, 1998, A.G. Op. #98-0689.

Pursuant to this section, the cost of transportation of a mental patient should paid out of county funds and the responsibility of the county of the patient's residence; however, other costs of transportation as identified in § 41-21-83 should be the responsibility of the State Board of Mental Health. Smith, Mar. 18, 2003, A.G. Op. #02-0219.

Section 41-21-65 permits family members of a person in need of treatment to file the required affidavit in the chancery court of the county of residence of that person. If the person in need of treatment is in the custody of the sheriff in another county, pursuant to § 41-21-67 the chancery court judge of the county of residence of such person has the authority to have the clerk issue a writ to the sheriff of the county where such person is in custody to have the person transported to the clerk or chancellor of the person's county of residence. Alternatively, § 41-21-67 also authorizes the writ to be directed to the sheriff of the county of residence of the person in need of treatment. If the writ is directed to the sheriff of a foreign county, then the sheriff may recover the costs of transportation from the county of residence of the person in need of treatment as provided in this section. Morrow, Nov. 5, 2004, A.G. Op. 04-0540.

No authority can be found for a municipality to voluntarily pay the costs to initiate civil commitment proceedings on behalf of a prisoner which are the statutory responsibility of the individual or county of residence. Blakley, Aug. 25, 2006, A.G. Op. 06-0383.

§ 41-21-81. Twenty days' observation, diagnosis and treatment; notice of need for further treatment; right to hearing on need for further treatment.

OPINIONS OF THE ATTORNEY GENERAL

There is no specific procedure outlined in Sections 41-21-61, et seq. regarding court orders to require committed patient to take medication; such a proceeding would be similar to procedures delineated in Sections 41-21-81 and 41-21-99 and burden to obtain order would be upon treatment facility, and not on local authorities in originating jurisdiction. Zachary, March 2, 1994, A.G. Op. #94-0068.

§ 41-21-82. Report prior to termination of initial commitment or discharge.

OPINIONS OF THE ATTORNEY GENERAL

Patients who have been judicially committed to East Mississippi State Hospital, who are receiving treatment in a local hospital in accordance with § 41-21-77 may be discharged by the director of the facility in accordance with either this section or § 41-21-87. Neither of those statutes contemplates a hearing prior to discharge of the patient by the director. Tillman, Nov. 7, 2003, A.G. Op. 03-0542.

The physician or local hospital director does not have the same authority with regard to a patient who is committed to East Mississippi State Hospital, or any other state institution, who is receiving treatment at a local hospital pending a bed at the state facility. In this situation, only the director of the facility to which the person was committed (the state facility) would have the authority to release or discharge a patient. Tillman, Nov. 7, 2003, A.G. Op. 03-0542.

§ 41-21-83. Hearing on need for further treatment.

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to § 41-21-79, the cost of transportation of a mental patient should paid out of county funds and the responsibility of the county of the patient's residence; however, other costs of transportation as identified in this section should be the responsibility of the State Board of Mental Health. Smith, Mar. 18, 2003, A.G. Op. #02-0219.

The standard for finding a person to be mentally ill or mentally retarded under this section is different than finding someone incompetent to stand trial under URCCC 9.06. Peterson, Apr. 23, 2004, A.G. Op. 04-0133.

§ 41-21-87. Discharge at behest of director of treatment facility.

OPINIONS OF THE ATTORNEY GENERAL

The physician or local hospital director does not have the same authority with regard to a patient who is committed to East Mississippi State Hospital, or any other state institution, who is receiving treatment at a local hospital pending a bed at the state facility. In this situation, only the director of the facility to which the person was committed (the state facility) would have the authority to release or discharge a patient. Tillman, Nov. 7, 2003, A.G. Op. 03-0542.

Patients who have been judicially committed to East Mississippi State Hospital, who are receiving treatment in a local hospital in accordance with § 41-21-77 may be discharged by the director of the facility in accordance with either § 41-21-82 or this section. Neither of those statutes contemplates a hearing prior to discharge of the patient by the director. Tillman, Nov. 7, 2003, A.G. Op. 03-0542.

§ 41-21-97. Confidentiality of hospital records and information; exceptions.

OPINIONS OF THE ATTORNEY GENERAL

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. McGee, Dec. 2, 2002, A.G. Op. #02-0543.

§ 41-21-99. Continued care of patients.

OPINIONS OF THE ATTORNEY GENERAL

There is no specific procedure outlined in Sections 41-21-61, et seq. regarding court orders to require committed patient to take medication; such a proceeding would be similar to procedures delineated in Sections 41-21-81 and 41-21-99 and burden to obtain order would be upon treatment facility, and not on local authorities in originating jurisdiction. Zachary, March 2, 1994, A.G. Op. #94-0068.

§ 41-21-104. Continuing jurisdiction of court over person committed to inpatient or outpatient treatment for one year after treatment completed; recommitment.

The court shall have continuing jurisdiction over a person committed to an inpatient or outpatient treatment program under this chapter for one (1) year after completion of the treatment program. During that time, the court, upon affidavit in the same cause of action, may conduct a hearing consistent with this chapter or Title 41, Chapter 31, Mississippi Code of 1972, to determine whether the person needs to be recommitted for further mental health treatment or to determine whether the person is in need of alcohol and drug treatment. Upon a finding by the court that the person is in need of further treatment, the court may commit the person to an appropriate treatment facility. The person subject to commitment must be afforded the due process to which he or she is entitled under Chapters 21 and 31 of Title 41, Mississippi Code of 1972. This section may not be construed so as to conflict with the provisions of Section 41-21-87.

HISTORY: Laws, 2019, ch. 468, § 11, eff from and after July 1, 2019.

HUDSON'S LAW; PROVISION OF CHROMOSOMAL DISORDERS EDUCATIONAL INFORMATION

Sec.

§ 41-21-251. Title.

This section and Section 41-21-253 shall be known and may be cited as "Hudson's Law."

HISTORY: Laws, 2021, ch. 375, § 1, eff from and after July 1, 2021.

§ 41-21-253. Legislative findings; "chromosomal disorder" defined; prenatal care, postnatal care and genetic counseling providers required to provide certain information about chromosomal disorders to expectant or new parents.

The Legislature finds the following:

(a) For purposes of this section, the term "chromosomal disorder" means trisomy 13 (otherwise known as Patau syndrome); trisomy 18 (otherwise known as Edwards syndrome); or trisomy 21 (otherwise known as Down syndrome).

(b) Any facility, physician, health care provider, nurse midwife or genetic counselor who renders prenatal care, postnatal care or genetic counseling, upon receipt of a positive test result from a test for a chromosomal disorder, shall provide the expectant or new parent with information provided by the department under paragraph (c) of this section.

(c) The Department of Health shall make available to any person who renders prenatal care, postnatal care or genetic counseling of parents who receive a prenatal or postnatal diagnosis of a chromosomal disorder the following:

(i) Up-to-date, evidence-based written information about a chromosomal disorder that has been reviewed by medical experts and national advocacy organizations for people with intellectual and other developmental disorders. The written information provided shall include physical, developmental, educational and psychosocial outcomes, life expectancy, clinical course, and intellectual and functional development and treatment options; and

(ii) The contact information regarding first-call programs and support services, including hotline specific to a chromosomal disorder, resource centers or clearinghouses, national and local organizations, and other education and support programs. The department may also make such available to any other person who has received a positive test for a chromosomal disorder.

(d) Information provided under this section shall be culturally and linguistically appropriate for women receiving a positive prenatal diagnosis or for the family of a child receiving a postnatal diagnosis of a chromosomal disorder.

HISTORY: Laws, 2021, ch. 375, § 2, eff from and after July 1, 2021.

CHAPTER 23.

CONTAGIOUS AND INFECTIOUS DISEASES; QUARANTINE

IN GENERAL

§ 41-23-1. Rules and regulations; physicians, health-care facilities, and correctional facilities to report cases of communicable and other dangerous diseases; penalties.

OPINIONS OF THE ATTORNEY GENERAL

Medical examiner is required to report to health department all deaths of persons diagnosed with AIDS; court of competent jurisdiction would issue subpoena for Board of Health records and Board would then have to comply with the request or ask the court to quash subpoena. West, Sept. 17, 1992, A.G. Op. #92-0522.

§ 41-23-13. Suppression of nuisances injurious to public health.

OPINIONS OF THE ATTORNEY GENERAL

For the abatement of public health nuisances, a county may notify the state board of health of the nuisance pursuant to this section or proceed under § 19-5-105, pertaining to the cleaning of private property, and the county may consider passing an ordinance pursuant to § 19-5-9, which allows for the adoption of codes dealing with general public health, safety or welfare. Fillingane, Oct. 25, 2002, A.G. Op. #02-0586.

CHAPTER 26.

MISSISSIPPI SAFE DRINKING WATER ACT OF 1997

IN GENERAL

§ 41-26-3. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

Under appropriate circumstances, a professional engineer, or any other person, operating under and subject to the provisions of the Safe Water Act or the regulations adopted in furtherance of that Act, may be found to be a violator and subjected to the penalties prescribed in §

41-26-31. Amy, Nov. 14, 2003, A.G. Op. 03-0598.

§ 41-26-23. Establishment of Drinking Water Quality Analysis Fund.

HISTORY: Laws, 1997, ch. 523, § 1; Laws, 2006, ch. 409, § 1; Laws, 2016, ch. 510, § 6, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 6, eff from and after July 1, 2020.

Editor's Notes — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

This section was reenacted without change by Laws of 2020, ch. 473, § 6. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-26-31. Enforcement of chapter; civil penalties.

OPINIONS OF THE ATTORNEY GENERAL

Under appropriate circumstances, a professional engineer, or any other person, operating under and subject to the provisions of the Safe Water Act or the regulations adopted in furtherance of that Act, may be found to be a violator and subjected to the penalties prescribed in this section. Amy, Nov. 14, 2003, A.G. Op. 03-0598.

COMMUNITY PUBLIC WATER SYSTEM

Sec.
41-26-101. Management training for community public water system board members.

§ 41-26-101. Management training for community public water system board members.

(1) Each member elected or reelected after June 30, 1998, to serve on a governing board of any community public water system, except systems operated by municipalities with a population greater than ten thousand (10,000), shall attend a minimum of eight (8) hours of management training within two (2) years following the election of that board member. Any member failing to complete the management training within two (2) years after his election shall be subject to removal from the board by the remaining members. If a board member has undergone training and is reelected to the board, that board member shall not be required to attend training as provided by this subsection.

(2) The management training shall be organized by the State Department of Health, in cooperation with the Mississippi Rural Water Association and other organizations. The management training shall include information on

water system management and financing, rate setting and structures, operations and maintenance, applicable laws and regulations, ethics, the duties and responsibilities of a board member and other information deemed necessary by the department after consultation with the association and other organizations. The department shall develop and provide all training materials. The association and other training organizations may charge a fee in the amount of Seventy-five Dollars ($75.00) per member plus the cost of the manual and materials. These costs shall be reimbursed to the board member as an expense of the community public water system.

(3) Two (2) officers of each board shall also obtain an additional four (4) hours of updated and advanced training within a four-year period. The term "officers" shall include the legally responsible official of the community public water system and the mayor, mayor pro tem, the president, and the vice president of the board. If one (1) of the officers is not able to attend the training, then he may appoint someone from among the existing board to attend in his place; however, the board member attending this training must have first completed the eight (8) hours of management training. This training will be held at a time and place that will accommodate those members who have other responsibilities. The training shall consist of, but not be limited to, updated regulatory rules and regulations, an in-depth look at the Mississippi Nonprofit Corporation Act as well as any updated information that would aid them in making decisions for their utility system. The association and other training organizations may charge a fee in the amount of Twenty-five Dollars ($25.00) per member plus the cost of the material needed for the training. These costs shall also be reimbursed to the board member as an expense of the community water system.

(4) To avoid board members having to interfere with their jobs or employment, management training sessions may be divided into segments and, to the greatest extent possible, shall be scheduled for evening sessions. The department shall conduct management training on a regional basis and shall use community college or other public facilities for the convenience of board members.

(5) The department may make exceptions to and grant exemptions and variances to the requirements of this section for good cause shown.

HISTORY: Laws, 1997, ch. 392, § 1; Laws, 1998, ch. 569, § 2; Laws, 2007, ch. 374, § 1; Laws, 2016, ch. 510, § 7, eff from and after July 1, 2016; Laws, 2020, ch. 430, § 1, eff from and after July 1, 2020; reenacted without change, Laws, 2020, ch. 473, § 7, eff from and after July 1, 2020.

Joint Legislative Committee Notes — Section 1 of Chapter 430, Laws of 2020, added a new subsection (3) to this section but failed to redesignate the subsequent subsections. Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected that error by redesignating former subsections (3) and (4) as (4) and (5). The Joint Committee ratified the correction at its October 19, 2020, meeting.

Section 1 of Chapter 430, Laws of 2020, effective from and after July 1, 2020 (approved July 1, 2020), amended this section. Section 7 of Chapter 473, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020), reenacted this section

without change. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the October 19, 2020, meeting of the Committee.

Editor's Notes — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The first 2020 amendment (ch. 430), in (2), deleted the former last three sentences, which read: "The department may charge a fee not to exceed Seventy-five Dollars ($75.00) per member to defray the actual costs of providing the materials and training. These costs shall be reimbursed to the board member as an expense of the community public water system. Any increase in the fee charged by the department under this subsection shall be in accordance with the provisions of Section 41-3-65," and added the present last two sentences; added (3); and redesignated former (3) and (4) as (4) and (5).

The second 2020 amendment (ch. 473) reenacted the section without change.

CHAPTER 27.

MOSQUITO CONTROL

ARTICLE 1.

COUNTY MOSQUITO CONTROL COMMISSIONS.

§ 41-27-1. County mosquito control commission authorized.

OPINIONS OF THE ATTORNEY GENERAL

A municipality may perform the functions given to mosquito control commissions created by counties. Fernald, Aug. 8, 2003, A.G. Op. 03-0408.

CHAPTER 29.

POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES

ARTICLE 3.

UNIFORM CONTROLLED SUBSTANCES LAW.

Sec.

§ 41-29-105. Definitions.

The following words and phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(i) A practitioner (or, in his presence, by his authorized agent); or

(ii) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. Such word does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman. This definition shall not be applied to the term "agent" when such term clearly designates a member or officer of the Bureau of Narcotics or other law enforcement organization.

(c) "Board" means the Mississippi State Board of Medical Licensure.

(d) "Bureau" means the Mississippi Bureau of Narcotics. However, where the title "Bureau of Drug Enforcement" occurs, that term shall also refer to the Mississippi Bureau of Narcotics.

(e) "Commissioner" means the Commissioner of the Department of Public Safety.

(f) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of Sections 41-29-113 through 41-29-121.

(g) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(h) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(i) "Director" means the Director of the Bureau of Narcotics.

(j) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(k) "Dispenser" means a practitioner who dispenses.

(*l*) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(m) "Distributor" means a person who distributes.

(n) "Drug" means (i) a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (iii) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and (iv) a substance intended for use as a component of any article specified in this paragraph. Such word does not include devices or their components, parts, or accessories.

(o) "Hashish" means the resin extracted from any part of the plants of the genus Cannabis and all species thereof or any preparation, mixture or derivative made from or with that resin.

(p) "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term "manufacture" does not include the preparation, compounding, packaging or labeling of a controlled substance in conformity with applicable state and local law:

(i) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(ii) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(r) "Marijuana" means all parts of the plant of the genus Cannabis and all species thereof, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds, excluding hashish.

The term "marijuana" does not include "hemp" as defined in and regulated by Sections 69-25-201 through 69-25-221.

(s) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;

(ii) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (i), but not including the isoquinoline alkaloids of opium;

(iii) Opium poppy and poppy straw; and

(iv) Cocaine, coca leaves and any salt, compound, derivative or preparation of cocaine, coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(t) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 41-29-111, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such word does include its racemic and levorotatory forms.

(u) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(v)(i) "Paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Law. It includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

3. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

4. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

5. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

6. Diluents and adulterants, such as quinine hydrochloride, man-

nitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

7. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

8. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

9. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

10. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

11. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

12. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums;

l. Bongs; and

m. Ice pipes or chillers.

(ii) In determining whether an object is paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;

2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

3. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substances Law;

4. The proximity of the object to controlled substances;

5. The existence of any residue of controlled substances on the object;

6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of the Uniform Controlled Substances Law; the innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Substances Law shall not prevent a finding that the object is intended for use, or designed for use as paraphernalia;

7. Instructions, oral or written, provided with the object concerning its use;

8. Descriptive materials accompanying the object which explain or depict its use;

9. National and local advertising concerning its use;

10. The manner in which the object is displayed for sale;

11. Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

13. The existence and scope of legitimate uses for the object in the community;

14. Expert testimony concerning its use.

(w) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(x) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(y) "Practitioner" means:

(i) A physician, dentist, veterinarian, scientific investigator, optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state; and

(ii) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(z) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(aa) "Sale," "sell" or "selling" means the actual, constructive or attempted transfer or delivery of a controlled substance for remuneration, whether in money or other consideration.

(bb) "State," when applied to a part of the United States, includes any

state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(cc) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

HISTORY: Codes, 1942, § 6831-56; Laws, 1971, ch. 521, § 6; Laws, 1972, ch. 520, § 5; Laws, 1974, ch. 415, § 1; Laws, 1981, ch. 502, § 1; Laws, 1982, ch. 323, § 1; Laws, 2005, ch. 404, § 4, eff from and after July 1, 2005; Laws, 2020, ch. 413, § 14, eff from and after passage (approved June 29, 2020).

Joint Legislative Committee Notes — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in paragraph (s)(ii) by substituting "subparagraph (i)" for "clause 1." The Joint Committee ratified the correction at its October 19, 2020, meeting.

Amendment Notes — The 2020 amendment, effective June 29, 2020, redesignated (a)(1) and (2) as (a)(i) and (ii); redesignated (n)(1) through (4) as (n)(i) through (iv); redesignated (q)(1) and (2) as (q)(i) and (ii); in (r), substituted "Marijuana" for "Marihuana" in the first paragraph and added the second paragraph; redesignated (s)(1) through (4) as (s)(i) through (iv); in (v), designated the formerly undesignated first paragraph (i), and therein redesignated former (i) through (xii) as 1. through 12., redesignated former (i)12.1 through 13 as (i)12.a. through m., and substituted "marijuana" for "marihuana" everywhere it appears, designated the formerly undesignated second paragraph (ii), and therein redesignated former (i) through (xiv) as 1. through 14.; and in (y), redesignated (1) and (2) as (i) and (ii).

§ 41-29-107. Bureau of narcotics; composition; qualifications; dismissal.

OPINIONS OF THE ATTORNEY GENERAL

Mississippi Highway Safety Patrol officers assigned to duty with the Bureau of Narcotics retain their status as Safety Patrol employees. Jones, March 13, 1998, A.G. Op. #98-0111.

The salary of the director of the Bureau of Narcotics may not be waived; however, the director may donate the salary back to the agency subject to mandatory deductions. Stringer, Jan. 3, 2003, A.G. Op. #02-0751.

§ 41-29-111. Powers and duties of bureau; regulation of substances.

(1) The Commissioner of Public Safety shall administer this article and shall work in conjunction and cooperation with the State Board of Pharmacy, county and municipal law enforcement agencies, the district and county attorneys, the Office of the Attorney General and the Mississippi Bureau of Narcotics. The State Board of Health shall work with the bureau in an advisory capacity and shall be responsible for recommending to the Legislature the appropriate schedule for all substances to be scheduled or rescheduled in Sections 41-29-113 through 41-29-121. In making a recommendation regarding a substance, the State Board of Health shall consider the following:

(a)(i) The actual or relative potential for abuse;

(ii) The scientific evidence of its pharmacological effect, if known;

(iii) The state of current scientific knowledge regarding the substance;

(iv) The history and current pattern of abuse;

(v) The scope, duration and significance of abuse;

(vi) The risk to the public health;

(vii) The potential of the substance to produce psychic or physiological dependence liability; and

(viii) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in paragraph (a), the State Board of Health shall make findings with respect thereto and issue a recommendation to control the substance if it finds the substance has a potential for abuse.

(c) If the State Board of Health designates a substance as an immediate precursor, substances that are precursors of the controlled precursor shall not be recommended for control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the State Board of Health, it shall recommend the control of the substance under this article at the next session of the Legislature.

(e)(i) Authority to control under this article does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in the Local Option Alcoholic Beverage Control Law, being Sections 67-1-1 through 67-1-91, and the Tobacco Tax Law of 1934, being Sections 27-69-1 through 27-69-77. It is the intent of the Legislature of the State of Mississippi that the bureau shall concentrate its efforts and resources on the enforcement of the Uniform Controlled Substances Law with respect to illicit narcotic and drug traffic in the state.

(ii) The controlled substances listed in the schedules in Sections 41-29-113 through 41-29-121 are included by whatever official, common, usual, chemical or trade name designated.

(f) The State Board of Health shall recommend the exclusion of any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug and Cosmetic Act and the laws of this state, be lawfully sold over the counter without a prescription.

(2) Any drug that is scheduled on the federal schedule for the purpose of preventing or treating COVID-19 is automatically scheduled on the corresponding state schedule in Sections 41-29-113 through 41-29-121. This automatic scheduling is effective from the date that the COVID-19-related drug is designated on the federal schedule until the effective date of legislation amending the corresponding state schedule in the next regular session of the Legislature.

HISTORY: Codes, 1942, § 6831-55; Laws, 1971, ch. 521, § 5; Laws, 1972, ch. 520, § 4; Laws, 1983, ch. 522, § 13; Laws, 2004, ch. 595, § 19; Laws, 2009, ch. 469, § 3, eff from and after July 1, 2009; Laws, 2020, ch. 497, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added (2).

§ 41-29-112. Special contract agents or investigators.

(1) The Director of the Bureau of Narcotics is authorized to retain on a contractual basis such persons as he shall deem necessary to detect and apprehend violators of the criminal statutes pertaining to the possession, sale or use of narcotics or other dangerous drugs.

(2) Those persons contracting with the Director of the Bureau of Narcotics, pursuant to subsection (1), shall be known as, and are hereinafter referred to as, "special contract agents."

(3) The investigative services provided for in this section shall be designed to support law enforcement efforts of state agencies and to support local law enforcement efforts.

(4) Special contract investigators shall have all powers necessary and incidental to the fulfillment of their contractual obligations, including the power of arrest when authorized by the Director of the Bureau of Narcotics.

(5) No person shall be a special contract investigator unless he is at least eighteen (18) years of age.

(6) The Director of the Bureau of Narcotics shall conduct a background investigation of all potential special contract investigators. If the background investigation discloses a criminal record, the applicant shall not be retained without the express approval of the Director of the Bureau of Narcotics. Any matters pertaining to special contract investigators shall be exempt from the provisions of a law relating to meetings open to the public, approved as now or hereafter amended.

(7) Any contract pursuant to subsection (1) shall be:

(a) Reduced to writing; and

(b) Terminable upon written notice by either party, and shall in any event terminate one (1) year from the date of signing; and

(c) Approved as to form by the Commissioner of Public Safety.

Such contracts shall not be public records and shall not be available for inspection under the provisions of a law providing for the inspection of public records as now or hereafter amended.

(8) Special contract investigators shall not be considered employees of the Bureau of Narcotics for any purpose.

(9) The Director of the Bureau of Narcotics shall have all powers necessary and incidental to the effective operation of this section.

(10) Notwithstanding any other provisions contained in this section, all said contracts and related matters shall be made available to the Legislative Budget Office and the State Fiscal Management Board.

HISTORY: Laws, 1974, ch. 414; Laws, 1984, ch. 488, § 208, eff from and after July 1, 1984; Laws, 2021, ch. 403, § 6, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (3), inserted "support law enforcement efforts of state agencies and to"; and in (7)(c), substituted "Commissioner of Public Safety" for "Attorney General."

§ 41-29-113. Schedule I of controlled substances.

SCHEDULE I

(a) Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, that is listed in this section.

(b) **Opiates.** Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl;

(2) Acetyl Fentanyl N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide;

(3) AH-7921 (3,4-dichloro-N-[(1-dimethylamino) cyclohexylmethyl]benzamide);

(4) Acetylmethadol;

(5) Allylprodine;

(6) Alphacetylmethadol, except levo-alphacetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(7) Alphameprodine;

(8) Alphamethadol;

(9) Alpha-methylfentanyl;

(10) Alpha-methylthiofentanyl;

(11) Benzethidine;

(12) Betacetylmethadol;

(13) Beta-hydroxyfentanyl;

(14) Beta-hydroxy-3-methylfentanyl;

(15) Betameprodine;

(16) Betamethadol;

(17) Betaprodine;

(18) Butyrl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide);

(19) Clonitazene;

(20) Dextromoramide;

(21) Diampromide;

(22) Diethylthiambutene;

(23) Difenoxin;

(24) Dimenoxadol;

(25) Dimepheptanol;

(26) Dimethylthiambutene;

(27) Dioxaphetyl butyrate;

(28) Dipipanone;

(29) Ethylmethylthiambutene;

(30) Etonitazene;

(31) Etoxeridine;

(32) Fentanyl-related substances, meaning any substance not otherwise listed under another schedule and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 USC 355] that is structurally related to fentanyl by one or more of the following modifications:

(A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(B) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(C) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(D) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(E) Replacement of the N-propionyl group by another acyl group.

Fentanyl-related substances include, but are not limited to, cyclopropyl fentanyl, (N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide); Furanyl-Fentanyl, (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide); valeryl fentanyl, (N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide); para-fluorobutyryl fentanyl, (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide); para-methoxybutyryl fentanyl, (N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide); para-chloroisobutyryl fentanyl, (N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide); isobutyryl fentanyl, (N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide); cyclopentyl fentanyl, (N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide); and ocfentanil, (N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide);

(33) Furethidine;

(34) Hydroxypethidine;

(35) Isotonitazene (N,N-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine);

(36) Ketobemidone (including the optical and geometric isomers);

(37) Levomoramide;

(38) Levophenacylmorphan;

(39) 3-methylfentanyl;

(40) 3-methylthiofentanyl;

(41) Morpheridine;

(42) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(43) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (other names: beta-hydroxythiofentanyl);

(44) Noracymethadol;

(45) Norlevorphanol;
(46) Normethadone;
(47) Norpipanone;
(48) Para-fluorofentanyl;
(49) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(50) Phenadoxone;
(51) Phenampromide;
(52) Phenomorphan;
(53) Phenoperidine;
(54) Piritramide;
(55) Proheptazine;
(56) Properidine;
(57) Propiram;
(58) Racemoramide;
(59) Thiofentanyl;
(60) Tilidine;
(61) Trimeperidine;
(62) U-47700, 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide.

(c) **Opium derivatives.** Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Monoacetylmorphine;
(16) Morphine methylbromide;
(17) Morphine methylsulfonate;
(18) Morphine-N-Oxide;
(19) Myrophine;
(20) Nicocodeine;
(21) Nicomorphine;
(22) Normorphine;
(23) Pholcodine;

(24) Thebacon.

(d) **Hallucinogenic substances.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric) and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Alpha-ethyltryptamine;

(2) 4-bromo-2,5-dimethoxy-amphetamine;

(3) 4-bromo-2,5-dimethoxyphenethylamine;

(4) 2,5-dimethoxyamphetamine;

(5) 2,5-dimethoxy-4-ethylamphetamine (DOET);

(6) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7);

(7) 4-methoxyamphetamine;

(8) 5-methoxy-3,4-methylenedioxy-amphetamine;

(9) 4-methyl-2,5-dimethoxy-amphetamine;

(10) 3,4-methylenedioxy amphetamine;

(11) 3,4-methylenedioxymethamphetamine (MDMA);

(12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);

(13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy MDA, N-OHMDA, and N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine);

(14) 3,4,5-trimethoxy amphetamine;

(15) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);

(16) Alpha-methyltryptamine (also known as AMT);

(17) Bufotenine;

(18) Diethyltryptamine;

(19) Dimethyltryptamine;

(20) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);

(21) Ibogaine;

(22) Lysergic acid diethylamide (LSD);

(23)(A) Marijuana (Hemp as defined and regulated under Sections 69-25-201 through 69-25-221 and Cannabidiol contained in a legend drug product approved by the Federal Food and Drug Administration or obtained under Section 41-29-136 are exempt under Schedule I);

(B) Hashish;

(24) Mescaline;

(25) Parahexyl;

(26) Peyote;

(27) N-ethyl-3-piperidyl benzilate;

(28) N-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

(31) Tetrahydrocannabinols, meaning tetrahydrocannabinols contained in a plant of the genus Cannabis (cannabis plant), as well as the

synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant such as the following:

(A) 1 cis or trans tetrahydrocannabinol;

(B) 6 cis or trans tetrahydrocannabinol;

(C) 3,4 cis or trans tetrahydrocannabinol.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of atomic positions, are covered.)

("Tetrahydrocannabinols" excludes dronabinol and nabilone.) For purposes of this paragraph, tetrahydrocannabinols do not include hemp or hemp products regulated under Sections 69-25-201 through 69-25-221.

However, the following products are exempted from control:

(i) THC-containing industrial products made from cannabis stalks (e.g., paper, rope and clothing);

(ii) Processed cannabis plant materials used for industrial purposes, such as fiber retted from cannabis stalks for use in manufacturing textiles or rope;

(iii) Animal feed mixtures that contain sterilized cannabis seeds and other ingredients (not derived from the cannabis plant) in a formula designed, marketed and distributed for nonhuman consumption;

(iv) Personal care products that contain oil from sterilized cannabis seeds, such as shampoos, soaps, and body lotions (if the products do not cause THC to enter the human body);

(v) Hemp as regulated under Sections 69-25-201 through 69-25-221; and

(vi) Any product derived from the hemp plant designed for human ingestion and/or consumption that is approved by the United States Food and Drug Administration;

(32) Phencyclidine;

(33) Ethylamine analog of phencyclidine (PCE);

(34) Pyrrolidine analog of phencyclidine (PHP, PCPy);

(35) Thiophene analog of phencyclidine;

(36) 1-[1-(2-thienyl)cyclohexyl] pyrrolidine (TCPy);

(37) 4-methylmethcathinone (mephedrone);

(38) 3,4-methylenedioxypyrovalerone (MDPV);

(39) 2-(2,5-dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-dimethoxy-4-methylphenyl)ethanamine (2C-D);

(41) 2-(4-chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);

(42) 2-(4-iodo-2,5-dimethoxyphenyl)ethanamine (2C-I); or 2,5-dimethoxy-4-iodophenethylamine;

(43) 2-[4-(ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);

(44) 2-[4-(isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);

(45) 2-(2,5-dimethoxyphenyl)ethanamine (2C-H);

(46) 2-(2,5-dimethoxy-4-nitro-phenyl)ethanamine (2C-N);

(47) 2-(2,5-dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

(48) 3,4-methylenedioxy-N-methylcathinone(methylone);

(49) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);

(50) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);

(51) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine or N-[(2-methoxyphenyl)methyl]ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5);

(52) 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1, 4-benzodiazepin-2-one (also known as Phenazepam);

(53) 7-(2-chlorophenyl)-4-ethyl-13-methyl-3-thia-1,8, 11,12-tetraazatricyclo[8.3.0.0]trideca-2(6),4,7,10,12-pentaene (also known as Etizolam);

(54) Salvia divinorum;

(55) Synthetic cannabinoids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of a synthetic cannabinoid found in any of the following chemical groups, whether or not substituted to any extent, or any of those groups which contain any synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation, including all synthetic cannabinoid chemical analogues in such groups:

(A) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

(B) Naphthoylindoles and naphthylmethylindoles, being any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane, whether or not substituted in the indole ring to any extent, or in the naphthyl ring to any extent;

(C) Naphthoylpyrroles, being any compound structurally derived from 3-(1-naphthoyl)pyrrole, whether or not substituted in the pyrrole ring to any extent, or in the naphthyl ring to any extent;

(D) Naphthylmethylindenes, being any compound structurally derived from 1-(1-naphthylmethyl)indene, whether or not substituted in the indene ring to any extent or in the naphthyl ring to any extent;

(E) Phenylacetylindoles, being any compound structurally derived from 3-phenylacetylindole, whether or not substituted in the indole ring to any extent or in the phenyl ring to any extent;

(F) Cyclohexylphenols, being any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol, whether or not substituted in the cyclohexyl ring to any extent or in the phenolic ring to any extent;

(G) Benzoylindoles, whether or not substituted in the indole ring to any extent or in the phenyl ring to any extent;

(H) Adamantoylindoles, whether or not substituted in the indole ring to any extent or in the adamantoyl ring system to any extent;

(I) Tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives, except where contained in cannabis or cannabis resin;

(J) 3-Cyclopropylmethanone indole or 3-Cyclobutylmethanone indole or 3-Cyclopentylmethanone indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl or cyclopentyl rings to any extent;

(K) Quinolinyl ester indoles, being any compound structurally derived from 1H-indole-3carboxylic acid-8-quinolinyl ester, whether or not substituted in the indole ring to any extent or the quinolone ring to any extent;

(L) 3-carboxamide-1H-indazoles, whether or not substituted in the indazole ring to any extent and substituted to any degree on the carboxamide nitrogen and 3-carboxamide-1H-indoles, whether or not substituted in the indole ring to any extent and substituted to any degree on the carboxamide nitrogen;

(M) Cycloalkanemethanone Indoles, whether or not substituted at the nitrogen atom on the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cycloalkane ring to any extent.

(e) **Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Clonazolam,
6-(2-chlorophenyl)-1-methyl-8-nitro-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine;

(2) Flualprazolam,
8-chloro-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine;

(3) Flubromazepam,
7-bromo-5-(2-fluorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one;

(4) Flubromazolam,
8-bromo-6-(2-fluorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepin;

(5) Gamma-hydroxybutyric acid (other names include: GHB, gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(6) Mecloqualone;

(7) Methaqualone.

(f) **Stimulants.** Any material, compound, mixture or preparation which contains any quantity of the following central nervous system

stimulants including optical salts, isomers and salts of isomers unless specifically excepted or unless listed in another schedule:

(1) Aminorex;

(2) N-benzylpiperazine (also known as BZP and 1-benzylpiperazine);

(3) Cathinone;

(4) Fenethylline;

(5) Methcathinone;

(6) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline);

(7) N-ethylamphetamine;

(8) Any material, compound, mixture or preparation which contains any quantity of N,N-dimethylamphetamine. (Other names include: N,N,-alpha-trimethyl-benzeneethanamine and N,N-alpha-trimethylphenethylamine);

(9) **Synthetic cathinones.**

(A) Unless listed in another schedule, any compound other than bupropion that is structurally derived from 2-Amino-1-phenyl-1-propanone by modification in any of the following ways:

(i) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) By substitution at the 3-position with an alkyl substituent;

(iii) By substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

(B) The compounds covered in this paragraph (9) include, but are not limited to, any material, compound, mixture or preparation which contains any quantity of a synthetic cathinone found in any of the following compounds, whether or not substituted to any extent, or any of these compounds which contain any synthetic cathinone, or salts, isomers, or salts of isomers, whenever the existence of such salts, isomers or salts of isomers is possible, unless specifically excepted or listed in another schedule:

(i) 4-methyl-N-ethylcathinone ("4-MEC");

(ii) 4-methyl-alpha-pyrrolidinopropiophenone ("4-MePPP");

(iii) Alpha-pyrrolidinopentiophenone ("α-PVP");

(iv) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one ("butylone");

(v) 2-(methylamino)-1-phenylpentan-1-one ("pentedrone");

(vi) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one ("pentylone");

(vii) 4-fluoro-N-methylcathinone ("4-FMC");

(viii) 3-fluoro-N-methylcathinone ("3-FMC");

(ix) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one ("naphyrone");

(x) Alpha-pyrrolidinobutiophenone ("α-PBP"); and

(xi) 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one (N-ethylpentylone, ephylone).

HISTORY: Codes, 1942, § 6831-57; Laws, 1971, ch. 521, § 7; Laws, 1974, ch. 415, § 2; Laws, 1975, ch. 465, § 1; Laws, 1977, ch. 391, § 1; Laws, 1978, ch. 404, § 1; Laws, 1979, ch. 368, § 1; Laws, 1981, ch. 502, § 2; Laws, 1982, ch. 402, § 1; Laws, 1983, ch. 404, § 1; Laws, 1985, ch. 308, § 1; Laws, 1986, ch. 512, § 1; Laws, 1987, ch. 475, § 1; Laws, 1988, ch. 319, § 1; Laws, 1989, ch. 568, § 1; Laws, 1995, ch. 443, § 1; Laws, 2001, ch. 491, § 1; Laws, 2008, ch. 491, § 1; Laws, 2010 2nd Ex Sess, ch. 27; Laws, 2011, ch. 363, § 1; Laws, 2012, ch. 493, § 1; Laws, 2014, ch. 501, § 1; Laws, 2016, ch. 392, § 1; Laws, 2017, ch. 370, § 2; Laws, 2017, ch. 394, § 1, eff from and after July 1, 2017; Laws, 2018, ch. 413, § 1, eff from and after passage (March 21, 2018); Laws, 2019, ch. 469, § 1, eff from and after July 1, 2019; Laws, 2020, ch. 413, § 13, eff from and after passage (approved June 29, 2020); Laws, 2021, ch. 351, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2019 amendment deleted the first paragraph, which read: "The controlled substances listed in this section are included in Schedule I"; added (a), and redesignated former (a) through (e) as (b) through (f); in (b), added "Unless specifically excepted or unless listed in another schedule" at the beginning, added (18) and redesignated former (18) through (40) as (19) through (41), rewrote (32), which read: "Furanyl Fentanyl, N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide," added "including the optical and geometric isomers" in (35), and deleted former (41), which read: "N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (other names: Butyryl fentanyl)"; in the introductory paragraphs of (c) and (d), added "Unless specifically excepted or unless listed in another schedule" at the beginning and deleted "unless specifically excepted" following "salts of isomers"; and in (f)(9)(B), added (xi) and made related changes.

The 2020 amendment, effective June 29, 2020, in (d)(23), inserted "(Hemp as defined and regulated under Sections 69-25-201 through 69-25-221," and substituted "are exempt" for "is exempt"; and in (d)(31), added the third paragraph, rewrote (v), which read: "Processed cannabis plant extract, oil or resin with a minimum ratio of twenty-to-one cannabidiol to tetrahydrocannabinol (20:1 cannabidiol:tetrahydrocannabinol), and diluted so as to contain at least fifty (50) milligrams of cannabidiol per milliliter, with not more than two and one-half (2.5) milligrams of tetrahydrocannabinol per milliliter," and added (vi).

The 2021 amendment, in (b), added (35), and redesignated former (35) through (61) as (36) through (62); and in (e), added (1) through (4), and redesignated former (1) through (3) as (5) through (7).

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.

Because the scienter requirement of this section mitigated any vagueness with respect to the failure of it to list "khat" as a controlled substance, defendant failed to meet the burden of proving that this section was unconstitutional. Mohamed v. State, — So. 3d —, 2021 Miss. App. LEXIS 171 (Miss. Ct. App. Apr. 20, 2021).

Because the scienter requirement of this section mitigated any vagueness with respect to the failure of it to list "khat" as a controlled substance, defendant failed to meet the burden of proving that this sec-

tion was unconstitutional. Mohamed v. State, — So. 3d —, 2021 Miss. App. LEXIS 171 (Miss. Ct. App. Apr. 20, 2021).

2. In general.

State's witnesses erroneously referred to Topamax (also known as Topiramate) as a controlled substance under Mississippi law because that drug, nor any of its components, were listed under any of the schedules provided by the statute; however, defendant did not raise the error in the trial court, nor did he argue it on appeal, and the error constituted no more than harmless error. Valentine v. State, — So. 3d —, 2021 Miss. LEXIS 149 (Miss. June 10, 2021).

7. "Khat."

Because the evidence showed that the khat recovered from defendant's store and home contained "any quantity" of cathinone, the khat was classified as a Schedule I controlled substance and the trial court did not err in allowing the State's witnesses to repeatedly refer to it as such. Mohamed v. State, — So. 3d —, 2021 Miss. App. LEXIS 171 (Miss. Ct. App. Apr. 20, 2021).

Because the evidence showed that the khat recovered from defendant's store and home contained "any quantity" of cathinone, the khat was classified as a Schedule I controlled substance and the trial court did not err in allowing the State's witnesses to repeatedly refer to it as such. Mohamed v. State, — So. 3d —, 2021 Miss. App. LEXIS 171 (Miss. Ct. App. Apr. 20, 2021).

§ 41-29-115. Schedule II of controlled substances.

(a) The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

SCHEDULE II

(b) **Substances, vegetable origin or chemical synthesis.** Unless specifically excepted or unless listed in other schedules, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, naldemedine, nalmefene, naloxegol, naloxone and naltrexone, but including the following:

(i) Codeine;

(ii) Dihydroetorphine;

(iii) Ethylmorphine;

(iv) Etorphine hydrochloride;

(v) Granulated opium;

(vi) Hydrocodone, whether alone or in combination with any material, compound, mixture or preparation;

(vii) Hydromorphone;

(viii) Metopon;

(ix) Morphine;

(x) Opium extracts;

(xi) Opium fluid extracts;

(xii) Oripavine;

(xiii) Oxycodone;

(xiv) Oxymorphone;

(xv) Powdered opium;

(xvi) Raw opium;

(xvii) Thebaine;

(xviii) Tincture of opium;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of cocaine or coca leaves, including cocaine and ecgonine and any salt, compound, derivative, isomer, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including:

(i) Decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; or

(ii) Ioflupane;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(c) **Opiates.** Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specified chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Bulk dextropropoxyphene (nondosage forms);

(6) Carfentanil;

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil;

(27) Sufentanil;

(28) Tapentadol;

(29) Thiafentanil, methyl 4-(2-methoxy-N-phenylacetamido)-1-(2-(thiophen-2-yl)ethyl)piperidine-4-carboxylate).

(d) **Stimulants.** Any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(4) Methylphenidate and its salts;

(5) Lisdexamfetamine, its salts, isomers and salts of isomers.

(e) **Depressants.** Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Glutethimide.

(f) **Hallucinogenic substances.**

(1) Dronabinol oral solution [(-)-delta-9-trans-tetrahydrocannabinol (delta-9-THC)];

(2) Nabilone [other names include: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a- hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo-(b,d)pyran-9-one].

(g) **Immediate precursors.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Amphetamine and methamphetamine immediate precursor: Phenylacetone (other names include: phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone);

(2) Phencyclidine immediate precursors:

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC);

(3) Fentanyl immediate precursor: 4-anilino-N-phenethyl-4-piperidine (ANPP).

(h) Any material, compound, mixture or preparation which contains any quantity of a Schedule II controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.24 or 1308.32, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY: Codes, 1942 § 5831-58; Laws, 1971, ch. 521, § 8; Laws, 1975, ch. 465, § 2; Laws, 1978, ch. 404, § 2; Laws, 1979, ch. 368, § 2; Laws, 1981, ch. 502, § 3; Laws, 1982, ch. 402, § 2; Laws, 1983, ch. 404, § 2; Laws, 1985, ch. 308, § 2; Laws, 1987, ch. 475, § 2; Laws, 1988, ch. 319, § 2; Laws, 1989, ch. 568, § 2; Laws, 1995, ch. 443, § 2; Laws, 2000, ch. 427, § 1; Laws, 2008, ch. 491, § 2; Laws, 2009, ch. 402, § 1; Laws, 2011, ch. 449, § 1; Laws, 2016, ch. 392, § 2; Laws, 2017, ch. 394, § 2, eff from and after July 1, 2017; Laws, 2018, ch. 413, § 2, eff from and after passage (March 21, 2018); Laws, 2019, ch. 469, § 2, eff from and after July 1, 2019; Laws, 2021, ch. 351, § 2, eff from and after July 1, 2021.

Amendment Notes — The 2019 amendment redesignated former (A) as (a), former (A)(a) through (f) as (b) through (g), and former (B) as (h); in (a), inserted "by whatever official name, common or usual name, chemical name, or brand name designated; in (b), added "Unless specifically excepted or unless listed in another schedule" at the beginning and deleted "except those narcotic drugs listed in other schedules" following "any of the following substances," and inserted "naldemedine" in (1); and in (e), inserted "specifically exempted or unless."

The 2021 amendment, in (c), rewrote (29), which read: "Thiafentanil, 4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-[2-(thienyl)ethyl]piperidine."

§ 41-29-117. Schedule III of controlled substances.

[Effective until January 1, 2022, this section will read as follows:]

(A) The controlled substances listed in this section are included in Schedule III.

SCHEDULE III

(a) **Stimulants.** Any material, compound, mixture, or preparation which contains any quantity of the following substances or their salts, isomers, or salts of isomers, of the following substances:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine;

(4) Phendimetrazine.

(b) **Depressants.** Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

(2) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing any of the following substances or any salt of the substances specifically included in this

subsection (2) and one or more other active medicinal ingredients which are not listed in any other schedule:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

(3) Any suppository dosage form containing any of the following substances or any salt of any of the substances specifically included in this subsection (3) approved by the Food and Drug Administration for marketing only as a suppository:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

(4) Chlorhexadol;

(5) Embutramide;

(6) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers and salts of isomers, for which an application is approved under Section 505 of the Federal Food, Drug and Cosmetic Act;

(7) Ketamine; its salts, isomers, and salts of isomers; other names include (+)-2-(2-chlorophenyl)-2-(methylamino)cyclohexanone;

(8) Lysergic acid;

(9) Lysergic acid amide;

(10) Methyprylon;

(11) Perampanel; its salts, isomers, and salts of isomers;

(12) Sulfondiethylmethane;

(13) Sulfonethylmethane;

(14) Sulfonmethane;

(15) Tiletamine and zolazepam or any salt thereof; other names for the tiletamine and zolazepam combination product include: telazol; other names for tiletamine include: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; other names for zolazepam include: 4-(2-fluorophenyl)-6,8-dihydro 1,3, 8-trimethylpyrazolo-[3,4-e](1,4)-diazepin-7(1H)-one, flupyrazapon.

(c) Nalorphine.

(d) Any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine.

(e) **Narcotic drugs.** Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than one and eight-tenths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than

ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(4) Not more than three hundred (300) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) **Anabolic steroids.** Unless specifically exempted or listed in another schedule, any material, compound, mixture or preparation containing any quantity of any of the following anabolic steroids (any drug or hormonal substance chemically and pharmacologically related to testosterone other than estrogens, progestins, corticosteroids and dehydroepiandrosterone):

(1) 3beta,17-dihydroxy-5a-androstane;

(2) 3alpha,17beta-dihydroxy-5a-androstane;

(3) 5alpha-androstan-3,17-dione;

(4) 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);

(5) 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);

(6) 4-androstenediol (3beta,17beta-dihydroxy-androst-4-ene);

(7) 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);

(8) 1-androstenedione ([5alpha]-androst-1-en-3,17-dione);

(9) 4-androstenedione (androst-4-en-3,17-dione);

(10) 5-androstenedione (androst-5-en-3,17-dione);

(11) Bolasterone (7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

(12) Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);

(13) Boldione (androsta-1,4-diene-3,17-dione);

(14) Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

(15) Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);

(16) Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methylandrost-1,4-dien-3-one);

(17) Desoxymethyltestosterone (17alpha-methyl-5alpha-androst-2-en-17beta-ol, also known as madol);

(18) Delta1-dihydrotestosterone (also known as 1-testosterone) (17beta-hydroxy-5alpha-androst-1-en-3-one);

(19) 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);

(20) Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);

(21) Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);

(22) Fluoxymesterone (9-fluoro-17alpha-methyl-11beta, 17beta-dihydroxyandrost-4-en-3-one);

(23) Formebolone (2-formyl-17alpha-methyl-11alpha,17beta-dihydroxyandrost-1, 4-dien-3-one);

(24) Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furazan);

(25) 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;

(26) 4-hydroxytestosterone (4,17beta-dihydroxyandrost-4-en-3-one);

(27) 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);

(28) Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);

(29) Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);

(30) Methandienone (17alpha-methyl-17beta-hydroxyandrost-1,4-dien-3-one);

(31) Methandriol (17alpha-methyl-3beta, 17beta-dihydroxyandrost-5-ene);

(32) Methasterone (2[alpha], 17[alpha]-dimethyl-5[alpha]-androstan-17[beta]-ol-3-one;

(33) Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);

(34) 17alpha-methyl-3beta, 17beta-dihydroxy-5a-androstane;

(35) 17alpha-methyl-3alpha, 17beta-dihydroxy-5a-androstane;

(36) 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene;

(37) 17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);

(38) Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);

(39) Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4,9-11-trien-3-one);

(40) Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);

(41) Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);

(42) 17alpha-methyl-Delta1-dihydrotestosterone (17b beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (also known as 17-alpha-methyl-1-testosterone);

(43) Nandrolone (17beta-hydroxyestr-4-en-3-one);

(44) 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);

(45) 19-nor-4-androstenediol (3a,17beta-dihydroxyestr-4-ene);

(46) 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);

(47) 19-nor-5-androstenediol (3alpha,17beta-dihydroxyestr-5-ene);

(48) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene3,17-dione, 19-norandrosta-4,9(10)-diene-3,17-dione);

(49) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(50) 19-nor-5-androstenedione (estr-5-en-3,17-dione);

(51) Norbolethone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);

(52) Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);

(53) Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);

(54) Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);

(55) Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);

(56) Oxymesterone (17alpha-methyl-4,17beta-dihydroxyandrost-4-en-3-one);

(57) Oxymetholone (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy-[5alpha]-androstan-3-one);

(58) Prostanozol (17[beta]-hydroxy-5[alpha]-androstano[3,2-c]pyrazole)

(59) Stanozolol (17alpha-methyl-17beta-hydroxy-[5alpha]-androst-2-eno[3,2-c]-pyrazole);

(60) Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);

(61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(62) Testosterone (17beta-hydroxyandrost-4-en-3-one);

(63) Tetrahydrogestrinone (13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);

(64) Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

(65) Any salt, ester, or ether of a drug or substance described in this paragraph. Except such term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph.

(g) Any material, compound, mixture or preparation which contains any quantity of buprenorphine or its salts.

(h) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule III controlled substance other than butalbital, and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

[Effective from and after January 1, 2022, this section will read as follows:]

(A) The controlled substances listed in this section are included in Schedule III.

SCHEDULE III

(a) **Stimulants.** Any material, compound, mixture, or preparation which contains any quantity of the following substances or their salts, isomers, or salts of isomers, of the following substances:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine;

(4) Phendimetrazine.

(b) **Depressants.** Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

(2) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing any of the following substances or any salt of the substances specifically included in this subsection (2) and one or more other active medicinal ingredients which are not listed in any other schedule:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

(3) Any suppository dosage form containing any of the following substances or any salt of any of the substances specifically included in this subsection (3) approved by the Food and Drug Administration for marketing only as a suppository:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

(4) Chlorhexadol;

(5) Embutramide;

(6) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers and salts of isomers, for which an application is approved under Section 505 of the Federal Food, Drug and Cosmetic Act;

(7) Ketamine; its salts, isomers, and salts of isomers; other names include (+)-2-(2-chlorophenyl)-2-(methylamino)cyclohexanone;

(8) Lysergic acid;

(9) Lysergic acid amide;

(10) Methyprylon;

(11) Perampanel; its salts, isomers, and salts of isomers;

(12) Sulfondiethylmethane;

(13) Sulfonethylmethane;

(14) Sulfonmethane;

(15) Tiletamine and zolazepam or any salt thereof; other names for the tiletamine and zolazepam combination product include: telazol; other names for tiletamine include: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; other names for zolazepam include: 4-(2-fluorophenyl)-6,8-dihydro 1,3, 8-trimethylpyrazolo-[3,4-e](1,4)-diazepin-7(1H)-one, flupyrazapon.

(c) Nalorphine.

(d) Any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine, except for any product that contains any quantity of pseudoephedrine or ephedrine that is sold subject to the quantity restrictions authorized in Section 73-21-124.

(e) **Narcotic drugs.** Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than one and eight-tenths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(4) Not more than three hundred (300) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) **Anabolic steroids.** Unless specifically exempted or listed in another schedule, any material, compound, mixture or preparation containing any quantity of any of the following anabolic steroids (any drug or hormonal substance chemically and pharmacologically related to testosterone other than estrogens, progestins, corticosteroids and dehydroepiandrosterone):

(1) 3beta,17-dihydroxy-5a-androstane;

(2) 3alpha,17beta-dihydroxy-5a-androstane;

(3) 5alpha-androstan-3,17-dione;

(4) 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);

(5) 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);

(6) 4-androstenediol (3beta,17beta-dihydroxy-androst-4-ene);

(7) 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);

(8) 1-androstenedione ([5alpha]-androst-1-en-3, 17-dione);

(9) 4-androstenedione (androst-4-en-3,17-dione);

(10) 5-androstenedione (androst-5-en-3,17-dione);

(11) Bolasterone (7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

(12) Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);

(13) Boldione (androsta-1,4-diene-3,17-dione);

(14) Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

(15) Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);

(16) Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methylandrost-1,4-dien-3-one);

(17) Desoxymethyltestosterone (17alpha-methyl-5alpha-androst-2-en-17beta-ol, also known as madol);

(18) Delta1-dihydrotestosterone (also known as 1-testosterone) (17beta-hydroxy-5alpha-androst-1-en-3-one);

(19) 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);

(20) Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);

(21) Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);

(22) Fluoxymesterone (9-fluoro-17alpha-methyl-11beta, 17beta-dihydroxyandrost-4-en-3-one);

(23) Formebolone (2-formyl-17alpha-methyl-11alpha,17beta-dihydroxyandrost-1, 4-dien-3-one);

(24) Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furazan);

(25) 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;

(26) 4-hydroxytestosterone (4,17beta-dihydroxyandrost-4-en-3-one);

(27) 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);

(28) Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);

(29) Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);

(30) Methandienone (17alpha-methyl-17beta-hydroxyandrost-1,4-dien-3-one);

(31) Methandriol (17alpha-methyl-3beta, 17beta-dihydroxyandrost-5-ene);

(32) Methasterone (2[alpha], 17[alpha]-dimethyl-5[alpha]-androstan-17[beta]-ol-3-one;

(33) Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);

(34) 17alpha-methyl-3beta, 17beta-dihydroxy-5a-androstane;

(35) 17alpha-methyl-3alpha, 17beta-dihydroxy-5a-androstane;

(36) 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene;

(37) 17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);

(38) Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);

(39) Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4,9-11-trien-3-one);

(40) Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);

(41) Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);

(42) 17alpha-methyl-Delta1-dihydrotestosterone (17b beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (also known as 17-alpha-methyl-1-testosterone);

(43) Nandrolone (17beta-hydroxyestr-4-en-3-one);

(44) 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);

(45) 19-nor-4-androstenediol (3a,17beta-dihydroxyestr-4-ene);

(46) 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);

(47) 19-nor-5-androstenediol (3alpha,17beta-dihydroxyestr-5-ene);

(48) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene3,17-dione, 19-norandrosta-4,9(10)-diene-3,17-dione);

(49) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(50) 19-nor-5-androstenedione (estr-5-en-3,17-dione);

(51) Norbolethone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);

(52) Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);

(53) Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);

(54) Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);

(55) Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);

(56) Oxymesterone (17alpha-methyl-4,17beta-dihydroxyandrost-4-en-3-one);

(57) Oxymetholone (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy-[5alpha]- androstan-3-one);

(58) Prostanozol (17[beta]-hydroxy-5[alpha]-androstano[3,2-c]pyrazole)

(59) Stanozolol (17alpha-methyl-17beta-hydroxy-[5alpha]-androst-2-eno[3,2-c]- pyrazole);

(60) Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);

(61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(62) Testosterone (17beta-hydroxyandrost-4-en-3-one);

(63) Tetrahydrogestrinone (13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);

(64) Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

(65) Any salt, ester, or ether of a drug or substance described in this paragraph. Except such term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph.

(g) Any material, compound, mixture or preparation which contains any quantity of buprenorphine or its salts.

(h) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule III controlled substance other than butalbital, and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY: Codes, 1942, § 6831-59; Laws, 1971, ch. 521, § 9; Laws, 1975, ch. 465, § 3; Laws, 1977, ch. 391, § 3; Laws, 1978, ch. 404, § 3; Laws, 1982, ch. 402, § 3; Laws, 1983, ch. 404, § 3; Laws, 1988, ch. 319, § 3; Laws, 1989, ch. 568, § 3; Laws, 1995, ch. 443, § 3; Laws, 2000, ch. 427, § 2; Laws, 2001, ch. 491, § 2; Laws, 2006, ch. 416, § 1; Laws, 2008, ch. 491, § 3; Laws, 2010, ch. 303, § 1; Laws, 2011, ch. 449, § 2; Laws, 2013, ch. 378, § 1; Laws, 2016, ch. 392, § 3; Laws, 2017, ch. 394, § 3, eff from and after July 1, 2017; Laws, 2021, ch. 320, § 2, eff from and after January 1, 2022.

Amendment Notes — The 2021 amendment, effective January 1, 2022, in (A)(d), added "except for any product...authorized in Section 73-21-124."

§ 41-29-119. Schedule IV of controlled substances.

(A) The controlled substances listed in this section are included in Schedule IV.

SCHEDULE IV

(a) **Narcotic drugs.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains limited quantities of the following narcotic drugs, or any salts thereof:

(1) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene, including its salts (Darvon, Darvon-N; also found in Darvon compound and Darvocet-N, etc.);

(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers (including tramadol).

(b) **Depressants.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Alfaxalone;
(2) Alprazolam;
(3) Barbital;
(4) Brexanolone;
(5) Bromazepam;
(6) Camazepam;
(7) Carisoprodol;
(8) Chloral betaine;
(9) Chloral hydrate;
(10) Chlordiazepoxide and its salts, but does not include chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and esterified estrogens;
(11) Clobazam;
(12) Clonazepam;
(13) Clorazepate;
(14) Clotiazepam;
(15) Cloxazolam;
(16) Delorazepam;
(17) Diazepam;
(18) Dichloralphenazone;
(19) Estazolam;
(20) Ethchlorvynol;
(21) Ethinamate;
(22) Ethyl loflazepate;
(23) Fludiazepam;
(24) Flunitrazepam;
(25) Flurazepam;
(26) Fospropofol;
(27) Halazepam;
(28) Haloxazolam;
(29) Ketazolam;
(30) Loprazolam;
(31) Lorazepam;
(32) Lormetazepam;
(33) Mebutamate;
(34) Medazepam;
(35) Meprobamate;
(36) Methohexital;
(37) Methylphenobarbital;

(38) Midazolam;
(39) Nimetazepam;
(40) Nitrazepam;
(41) Nordiazepam;
(42) Oxazepam;
(43) Oxazolam;
(44) Paraldehyde;
(45) Petrichloral;
(46) Phenobarbital;
(47) Pinazepam;
(48) Prazepam;
(49) Quazepam;
(50) Suvorexant;
(51) Temazepam;
(52) Tetrazepam;
(53) Triazolam;
(54) Zaleplon;
(55) Zolpidem;
(56) Zopiclone.

(c) Fenfluramine.

(d) **Lorcaserin.** Any material, compound, mixture, or preparation which contains any quantity of Lorcaserin, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

(e) **Stimulants.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Cathine ((+/-) Norpseudoephedrine);
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenproporex;
(5) Mazindol;
(6) Mefenorex;
(7) Modafinil;
(8) Pemoline (including any organometallic complexes and chelates thereof);
(9) Phentermine;
(10) Pipradrol;
(11) Sibutramine;
(12) Solriamfetol;
(13) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) **Other substances.**

(1) Pentazocine;
(2) Butorphanol (including its optical isomers);
(3) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid); (including its optical isomers) and its salts, isomers, and salts of isomers.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule IV controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY: Codes, 1942, § 6831-60; Laws, 1971, ch. 521, § 10; Laws, 1975, ch. 465, § 4; Laws, 1977, ch. 391, § 4; Laws, 1978 ch. 404, § 4; Laws, 1979, ch. 368, § 3; Laws, 1981, ch. 502, § 4; Laws, 1982, ch. 402, § 5; Laws, 1983, ch. 404, § 4; Laws, 1986, ch. 512, § 2; Laws, 1987, ch. 475, § 3; Laws, 1989, ch. 568, § 4; Laws, 1995, ch. 443, § 4; Laws, 1998, ch. 328, § 1; Laws, 2000, ch. 427, § 3; Laws, 2001, ch. 491, § 3; Laws, 2006, ch. 416, § 2; Laws, 2008, ch. 491, § 4; Laws, 2011, ch. 449, § 3; Laws, 2014, ch. 501, § 2; Laws, 2016, ch. 392, § 4; Laws, 2017, ch. 394, § 4, eff from and after July 1, 2017; Laws, 2021, ch. 351, § 3, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (A)(b), added (4) and redesignated former (4) through (55) as (5) through (56); and in (A)(e), added (12) and redesignated former (12) as (13).

§ 41-29-121. Schedule V of controlled substances.

SCHEDULE V

(a) Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. [Reserved]

(c) **Narcotic drugs containing nonnarcotic active medicinal ingredients.** Any compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(2) Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(3) Not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(4) Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulphate per dosage unit;

(5) Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams;

(6) Not more than five-tenths (0.5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

(d) **Stimulants.** Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers and salts of isomers: Pyrovalerone.

(e) **Depressants.** Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers and salts of isomers:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact);

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

(3) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide];

(4) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

(f) Any material, compound, mixture or preparation which contains any quantity of a Schedule V controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY: Codes, 1942, § 6831-61; Laws, 1971, ch. 521, § 11; Laws, 1978, ch. 404, § 5; Laws, 1979, ch. 368, § 4; Laws, 1983, ch. 404, § 5; Laws, 1986, ch. 512, § 3; Laws, 1989, ch. 568, § 5; 1995, ch. 443, § 5; Laws, 2006, ch. 416, § 3; Laws, 2008, ch. 491, § 5; Laws, 2011, ch. 449, § 4; Laws, 2013, ch. 378, § 2; Laws, 2017, ch. 394, § 5, eff from and after July 1, 2017; Laws, 2019, ch. 469, § 3, eff from and after July 1, 2019; Laws, 2020, ch. 497, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2019 amendment deleted former (A), which read: "The controlled substances listed in this section are included in Schedule V"; added (a) and (b); redesignated former (A)(a) through (c) as (c) through (e), added (f), and redesignated former (B) as (g); in (c), in the introductory paragraph, deleted "limited quantities of" following "preparation containing" and inserted "or their salts calculated...quantities as set forth below," and inserted "or any of its salts" in (1), (2) and (3); and in (e), added "isomers and salts of isomers" at the end of the introductory paragraph.

The 2020 amendment deleted former (f), which read: "**Approved cannabidiol drugs.** A drug product in finished dosage formulation that has been approved by the United States Food and Drug Administration that contains cannabidiol (2-R-3-methyl-6R-1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols"; and redesignated former (g) as (f).

§ 41-29-136. Harper Grace's Law; legal possession, use, research, cultivation, processing, dispensing, prescribing or administration of cannabidiol; restrictions [Repealed effective July 1, 2024].

(1) "CBD solution" means a pharmaceutical preparation consisting of processed cannabis plant extract in oil or other suitable vehicle.

(2)(a) CBD solution prepared from (i) Cannabis plant extract that is provided by the National Center for Natural Products Research at the University of Mississippi under appropriate federal and state regulatory approvals, or (ii) Cannabis extract from hemp produced pursuant to Sections 69-25-201 through 69-25-221, which is prepared and tested to meet compliance with regulatory specifications, may be dispensed by the Department of Pharmacy Services at the University of Mississippi Medical Center (UMMC Pharmacy) after mixing the extract with a suitable vehicle. The CBD solution may be prepared by the UMMC Pharmacy or by another pharmacy or laboratory in the state under appropriate federal and state regulatory approvals and registrations.

(b) The patient or the patient's parent, guardian or custodian must execute a hold-harmless agreement that releases from liability the state and any division, agency, institution or employee thereof involved in the research, cultivation, processing, formulating, dispensing, prescribing or administration of CBD solution obtained from entities authorized under this section to produce or possess cannabidiol for research under appropriate federal and state regulatory approvals and registrations.

(c) The National Center for Natural Products Research at the University of Mississippi and the Mississippi Agricultural and Forestry Experiment Station at Mississippi State University are the only entities authorized to produce cannabis plants for cannabidiol research.

(d) Research of CBD solution under this section must comply with the provisions of Section 41-29-125 regarding lawful possession of controlled substances, of Section 41-29-137 regarding record-keeping requirements relative to the dispensing, use or administration of controlled substances, and of Section 41-29-133 regarding inventory requirements, insofar as they are applicable. Authorized entities may enter into public-private partnerships to facilitate research.

(3)(a) In a prosecution for the unlawful possession of marijuana under the laws of this state, it is an affirmative and complete defense to prosecution that:

(i) The defendant suffered from a debilitating epileptic condition or related illness and the use or possession of CBD solution was pursuant to the order of a physician as authorized under this section; or

(ii) The defendant is the parent, guardian or custodian of an individual who suffered from a debilitating epileptic condition or related illness and the use or possession of CBD solution was pursuant to the order of a physician as authorized under this section.

(b) An agency of this state or a political subdivision thereof, including any law enforcement agency, may not initiate proceedings to remove a child from the home based solely upon the possession or use of CBD solution by the child or parent, guardian or custodian of the child as authorized under this section.

(c) An employee of the state or any division, agency, institution thereof involved in the research, cultivation, processing, formulation, dispensing,

prescribing or administration of CBD solution shall not be subject to prosecution for unlawful possession, use, distribution or prescription of marijuana under the laws of this state for activities arising from or related to the use of CBD solution in the treatment of individuals diagnosed with a debilitating epileptic condition.

(4) This section shall be known as "Harper Grace's Law."

(5) This section shall stand repealed from and after July 1, 2024.

HISTORY: Laws, 2014, ch. 501, § 3; Laws, 2017, ch. 370, § 1, eff from and after passage (approved Mar. 20, 2017); Laws, 2020, ch. 413, § 15, eff from and after passage (approved June 29, 2020); Laws, 2021, ch. 428, § 1, eff from and after July 1, 2021; Laws, 2021, ch. 428, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment, effective June 29, 2020, in (2)(a), added (ii), and deleted the former last sentence, which read: "For the purposes of clinical trials under this section, CBD solution must meet the standard of exemption from control under Section 41-29-113."

The 2021 amendment extended the date of the repealer for the section by substituting "July 1, 2024" for "July 1, 2021" in (5).

§ 41-29-137. Prescriptions.

(a)(1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II, as set out in Section 41-29-115, may be dispensed without the written valid prescription of a practitioner. A practitioner shall keep a record of all controlled substances in Schedule I, II and III administered, dispensed or professionally used by him otherwise than by prescription.

(2) In emergency situations, as defined by rule of the State Board of Pharmacy, Schedule II drugs may be dispensed upon the oral valid prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 41-29-133. No prescription for a Schedule II substance may be refilled unless renewed by prescription issued by a licensed medical doctor.

(b) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, as set out in Sections 41-29-117 and 41-29-119, shall not be dispensed without a written or oral valid prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(c) A controlled substance included in Schedule V, as set out in Section 41-29-121, shall not be distributed or dispensed other than for a medical purpose.

(d) An optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165 shall be authorized to prescribe oral analgesic controlled substances in Schedule IV or V, as pertains to treatment and management of eye disease by written prescription only.

(e) Administration by injection of any pharmaceutical product authorized

in this section is expressly prohibited except when dispensed directly by a practitioner other than a pharmacy.

(f)(1) For the purposes of this article, Title 73, Chapter 21, and Title 73, Chapter 25, Mississippi Code of 1972, as it pertains to prescriptions for controlled substances, a "valid prescription" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by:

(A) A practitioner who has conducted at least one (1) in-person medical evaluation of the patient, except as otherwise authorized by Section 41-29-137.1; or

(B) A covering practitioner.

(2)(A) "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

(B) "Covering practitioner" means a practitioner who conducts a medical evaluation other than an in-person medical evaluation at the request of a practitioner who has conducted at least one (1) in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine within the previous twenty-four (24) months and who is temporarily unavailable to conduct the evaluation of the patient.

(3) A prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire is not a valid prescription.

(4) Nothing in this subsection (f) shall apply to:

(A) A prescription issued by a practitioner engaged in the practice of telemedicine as authorized under state or federal law; or

(B) The dispensing or selling of a controlled substance pursuant to practices as determined by the United States Attorney General by regulation.

HISTORY: Codes, 1942, § 6831-69; Laws, 1971, ch. 521, § 19; Laws, 2005, ch. 404, § 5; Laws, 2009, ch. 469, § 8; Laws, 2011, ch. 449, § 5, eff from and after July 1, 2011; Laws, 2020, ch. 363, § 2, eff from and after passage (approved June 25, 2020); Laws, 2021, ch. 386, § 2, eff from and after passage (approved March 22, 2021).

Amendment Notes — The 2020 amendment, effective June 25, 2020, inserted "except as otherwise authorized by Section 41-29-137.1" in (f)(1)(A); and substituted "subsection (f)" for "subsection (b)" in (f)(4).

The 2021 amendment, effective March 22, 2021, in (f)(1)(A), deleted "through June 30, 2021" following "Section 41-29-137.1."

§ 41-29-137.1. Licensed hospice medical director authorized to prescribe controlled substances without in-person face-to-face visit with patient for terminal disease pain.

The medical director of a licensed hospice, in his or her discretion, may

prescribe controlled substances for a patient of the hospice for terminal disease pain without having an in-person face-to-face visit with the patient before issuing the prescription. The provisions of this section supersede the provisions of any rule or regulation of a licensing agency to the contrary.

HISTORY: Laws, 2020, ch. 363, § 1, eff from and after passage (approved June 25, 2020); Laws, 2021, ch. 386, § 1, eff from and after passage (approved March 22, 2021).

Amendment Notes — The 2021 amendment, effective March 22, 2021, deleted the former last sentence of the section, which read: "This section shall stand repealed on July 1, 2021."

§ 41-29-139. Prohibited acts; penalties.

JUDICIAL DECISIONS

ANALYSIS

III. PROSECUTION; PROCEDURE.

11. Indictment.

Reference in the indictment to cocaine as a Schedule I, rather than a Schedule II, controlled substance did not render the indictment fatally defective because the nature of the charge and its penalty under this section was governed by the weight of the cocaine involved, not whether it is identified as a Schedule I or II controlled substance. Blakely v. State, 311 So. 3d 593, 2020 Miss. App. LEXIS 350 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 830, 2021 Miss. LEXIS 42 (Miss. 2021).

Reference in the indictment to cocaine as a Schedule I rather than a Schedule II controlled substance did not render it fatally defective because the nature of the charge and its penalty was governed by the weight of the cocaine involved, not whether it was identified as a Schedule I or II controlled substance; the indictment cited the charging statute, named the substance, and included the weight, and thus, defendant was notified of the nature of the charge and the potential penalties. McFarland v. State, 297 So. 3d 1110, 2020 Miss. App. LEXIS 349 (Miss. Ct. App. 2020).

16. Jury instructions.

Defendant was entitled to reversal of his conviction for selling methamphetamine because the jury was not instructed on an essential element of the charged crime where the instruction omitted the essential element that defendant knowingly and intentionally sold a controlled substance. Jennings v. State, 311 So. 3d 712, 2021 Miss. App. LEXIS 61 (Miss. Ct. App. 2021).

In connection with defendant's conviction of possession of cocaine, the jury instructions correctly stated the law, properly instructed the jury on constructive possession, and provided more than the mere general instructions on the State's burden of proof and defendant's presumption of innocence. Grassaree v. State, 266 So. 3d 1038, 2018 Miss. App. LEXIS 516 (Miss. Ct. App. 2018), cert. denied, 267 So. 3d 280, 2019 Miss. LEXIS 147 (Miss. 2019).

17. Sentence.

Because defendant was convicted for possession of thirty grams or more of methamphetamine, he should have been sentenced for trafficking under § 41-29-139(f) and not aggravated trafficking un-

der § 41-29-139(g). Guss v. State, 296 So. 3d 734, 2020 Miss. App. LEXIS 22 (Miss. Ct. App. 2020).

Statutory sentencing provision under subsection (f) did not constitute cruel and unusual punishment as applied to defendant because defendant was sentenced to twenty years, well within the statutory guidelines under subsection (f)(1), which allowed for imprisonment for a term of not less than ten years nor more than forty years. McFarland v. State, 297 So. 3d 1110, 2020 Miss. App. LEXIS 349 (Miss. Ct. App. 2020).

Circuit court did not violate petitioner's right to due process when it denied his postconviction relief motion without considering the mitigating factors in the statute; the factors are conjunctive, requiring that all factors be met to be applicable. No evidence was presented that petitioner was a leader of a criminal enterprise, but a weapon was present during the commission of the crime, and the maximum sentence was not given here. Hill v. State, 305 So. 3d 436, 2020 Miss. App. LEXIS 609 (Miss. Ct. App. 2020).

Defendant was correctly sentenced under the provisions of the statute in effect at the time he committed the crime of sale of a controlled substance because the addition of a quantity element to the crime of sale of a controlled substance did not create a completely new crime. Ware v. State, — So. 3d —, 2019 Miss. App. LEXIS 164 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 279 So. 3d 1086, 2019 Miss. LEXIS 386 (Miss. 2019).

Appellant, who received a 60-year sentence, could have been sentenced up to 180 years pursuant to Miss. Code Ann. §§ 41-29-139(b)(1)(C) and 41-29-147. Because there was no inference of gross disproportionality and no proportionality analysis was required, appellant's claim that his sentence was disproportionate was without merit. Smith v. State, 291 So. 3d 1, 2019 Miss. App. LEXIS 317 (Miss. Ct. App. 2019).

Because the sentencing recommendations by the State were reasonable, the trial court did not err in deciding not to reduce defendant's sentence under this section. Jackson v. State, 263 So. 3d 1003, 2018 Miss. App. LEXIS 329 (Miss. Ct. App. 2018), cert. denied, — So. 3d —, 2019 Miss. LEXIS 71 (Miss. 2019), cert. denied, 263 So. 3d 665, 2019 Miss. LEXIS 65 (Miss. 2019).

Defendant's eight-year sentence for methamphetamine possession was not unduly harsh, did not constitute cruel and unusual punishment, and was not grossly disproportionate because his sentence fell within the statutory limits. Vincent v. Mississippi, 271 So. 3d 520, 2018 Miss. App. LEXIS 538 (Miss. Ct. App. 2018).

Because defendant's conviction and sentence for murder stood reversed, the proper course was to remand the case to the circuit court for resentencing on the remaining conviction for drug trafficking; it was possible that the circuit court's original sentence for drug trafficking was influenced by the murder sentence that it imposed the same day. O'Kelly v. State, 267 So. 3d 282, 2018 Miss. App. LEXIS 418 (Miss. Ct. App. 2018).

IV. EVIDENCE.

26. Sufficient evidence—possession.

There was sufficient evidence to show that defendant knew a package he accepted from the United States Postal Service contained methamphetamine, including a postal inspector's testimony that, in the controlled deliveries he had made in the past, a person had never accepted a package with a bogus name on it unless it contained something illegal. Guss v. State, 296 So. 3d 734, 2020 Miss. App. LEXIS 22 (Miss. Ct. App. 2020).

Rational jurors could have found that the State proved each element needed to convict defendant for possession of a controlled substance. Accordingly, the evidence was sufficient to support defendant's conviction, and the circuit court did not commit error by denying defendant's motion for a judgment notwithstanding the verdict. McDaniel v. State, 290 So. 3d 1286, 2020 Miss. App. LEXIS 54 (Miss. Ct. App. 2020).

Evidence was sufficient to support defendant's conviction of constructive possession of methamphetamine because it showed that he had lived in the apartment for five years, defendant's belongings were found in the bedroom where the safe con-

taining methamphetamine was found, and earlier that same day a confidential informant had purchased methamphetamine from defendant. Harvell v. State, 281 So. 3d 1024, 2019 Miss. App. LEXIS 192 (Miss. Ct. App. 2019).

Evidence supported defendant's conviction for possession of at least 250 grams but less than 500 grams of Fubinaca, a Schedule I controlled substance, because a witness testified that defendant was assigned to the witness to work as a trusty under the supervision of the witness, defendant placed defendant's jacket on a bench inside before going outside to work, when the witness smelled a strong odor of marijuana in the men's room, and a large block of what appeared to be drugs fell to the ground when the witness searched defendant's jacket. Jones v. State, — So. 3d —, 2019 Miss. App. LEXIS 235 (Miss. Ct. App. May 28, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 455 (Miss. 2019), cert. denied, 284 So. 3d 752, 2019 Miss. LEXIS 445 (Miss. 2019).

Verdict finding defendant guilty of possession of methamphetamine was not contrary to the overwhelming weight of the evidence and allowing it to stand would not sanction an unconscionable justice because several witnesses, including the on-scene paramedic, hospital physician, and the police officers, testified that defendant acted and appeared intoxicated; defendant's blood tested positive for methamphetamine; several witnesses testified that defendant had thrown objects into the woods; a scale with defendant's thumbprint along with a bag containing a substance later tested and shown to be methamphetamine were found within throwing distance of his vehicle; and several police officers independently testified that the scene was secure. Vincent v. Mississippi, 271 So. 3d 520, 2018 Miss. App. LEXIS 538 (Miss. Ct. App. 2018).

27. —Sale or distribution, or intent as to same.

Evidence was sufficient to support defendant's conviction of two counts of transferring cocaine because the confidential informant testified that was defendant who sold her cocaine on two occasions and it was defendant in the video of the sale, three officers testified that it was defendant in the video, defendant's broth testified that he did not have a tattoo on his left forearm, and defendant testified that he had a tattoo on his left forearm. Johnson v. State, 311 So. 3d 1161, 2020 Miss. App. LEXIS 90 (Miss. Ct. App. 2020), cert. denied, 302 So. 3d 648, 2020 Miss. LEXIS 352 (Miss. 2020), cert. denied, — U.S. —, 209 L. Ed. 2d 741, 2021 U.S. LEXIS 2351 (U.S. 2021).

Evidence was sufficient to convict defendant of possession of 40 or more dosage units of methamphetamine with the intent to transfer or distribute and the verdict was not against the overwhelming weight of the evidence because defendant was the driver and sole occupant of the vehicle; he admitted that he frequently used the vehicle owned by another individual; the first officer observed defendant trying to stuff something between the driver's seat and center console; the second officer recovered an unlabeled pill bottle containing 142 multi-colored, multi-shaped pills from between the driver's seat and console; the testing of one pill from each homogeneous group of pills was permissible; and the pills tested positive for methamphetamine. Lavant v. State, 281 So. 3d 48, 2019 Miss. App. LEXIS 13 (Miss. Ct. App. 2019).

Any rational trier of fact could have found beyond a reasonable doubt the essential elements of possession of 200 grams or more of 5-fluoro-ADB with intent because a sergeant testified that two boxes, one containing a drone and one containing synthetic marijuana, cigarettes, cell phones, cell phone chargers, a distributor cap, a vacuum sealer, and shrink wrap, were found inside an apartments; in addition to defendant's proximity to the boxes, both boxes had his name and address on them. Word v. State, — So. 3d —, 2019 Miss. App. LEXIS 403 (Miss. Ct. App. Aug. 20, 2019), cert. denied, 289 So. 3d 311, 2020 Miss. LEXIS 62 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 214 (Miss. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Section 63-1-71(2) and Section 41-29-139(c)(2)(A) are not in conflict; report of conviction for less than one ounce of marijuana must be sent to the Bureau of Narcotics pursuant to Section 41-29-139, and, if court is unable to collect the license of person convicted, court shall also cause report of conviction to be sent to Commissioner of Public Safety, Driver Improvement Division. Lowe, Sept. 16, 1992, A.G. Op. #92-0680.

Provisions and requirements of section, by their express terms, apply only to marijuana violations and certain records that must be maintained and periodically expunged by the Mississippi Bureau of Narcotics; provisions do not address records that local law enforcement may have. Minor, Dec. 9, 1992, A.G. Op. #92-0859.

§ 41-29-144. Acquiring or obtaining possession of controlled substance, legend drug or prescription by misrepresentation, fraud and the like; penalty.

OPINIONS OF THE ATTORNEY GENERAL

A conviction of prescription forgery does not disqualify one as a registered voter. Salazar, April 7, 2000, A.G. Op. #2000-0169.

§ 41-29-147. Second and subsequent offenses.

JUDICIAL DECISIONS

2. Sentence.

Defendant's concurrent and consecutive maximum enhanced sentences for possession of schedule I and II controlled substances with intent to sell, conspiracy to sell a schedule I controlled substance, and possession of a firearm by a felon were not grossly excessive and disproportionate to the crimes because defendant was adjudicated a non-violent habitual offender due to defendant's prior conviction for possession of marijuana and the circuit court did not abuse its discretion by applying the subsequent drug offender enhancement. Williams v. State, — So. 3d —, 2021 Miss. App. LEXIS 194 (Miss. Ct. App. May 4, 2021).

Appellant, who received a 60-year sentence, could have been sentenced up to 180 years pursuant to Miss. Code Ann. §§ 41-29-139(b)(1)(C) and 41-29-147. Because there was no inference of gross disproportionality and no proportionality analysis was required, appellant's claim that his sentence was disproportionate was without merit. Smith v. State, 291 So. 3d 1, 2019 Miss. App. LEXIS 317 (Miss. Ct. App. 2019).

§ 41-29-150. Participation in drug rehabilitation programs; probation; expunction of record upon application to court.

Cross References — Provision whereby person who has been convicted of a misdemeanor, and who is first offender, may petition the court to have his record expunged, see § 99-19-71.

OPINIONS OF THE ATTORNEY GENERAL

An offender who has been convicted of a nonviolent offense and who has had a previous felony charge expunged under subdivision (d)(2) of this section may qualify as a first offender for parole eligibility purposes under § 47-7-3(g). Epps, Nov. 7, 2003, A.G. Op. 03-0589.

§ 41-29-153. Forfeitures.

OPINIONS OF THE ATTORNEY GENERAL

Money in forfeiture accounts can be used to increase law enforcement resources by purchasing liens or other interests of innocent third parties in forfeited personal property so that the property can be released for the use of the law enforcement agency. Magee, Jan. 16, 1992, A.G. Op. #91-0778.

A city could institute a forfeiture action with regard to cash found on the person of a dead suspected local drug dealer where the deceased's mother was believed to have resided in California, there had been no contact with her since 1996, she was believed to have died, and it was unknown whether the deceased had any other relatives. Strahan, Nov. 10, 2000, A.G. Op. #2000-0638.

A prosecutor's actions in initiating and pursuing a civil proceeding for the forfeiture of criminal property are entitled to absolute immunity. Hedgepath, Apr. 17, 2003, A.G. Op. #02-0592.

§ 41-29-154. Disposition of seized controlled substances and paraphernalia.

OPINIONS OF THE ATTORNEY GENERAL

A law enforcement agency should contact the Director of the Bureau of Narcotics for the use of forfeited controlled substances for training or demonstration purposes under §§ 41-29-154 and 41-29-181. Genin, April 16, 1999, A.G. Op. #99-0169.

§ 41-29-159. Powers of enforcement personnel; duty of certain individuals to notify Bureau of Narcotics of death caused by drug overdose.

OPINIONS OF THE ATTORNEY GENERAL

Under Section 41-29-159, agents of the Mississippi Bureau of Narcotics have the authority to execute a grand jury capias and arrest defendants indicted for violations of the Uniform Controlled Substances Law. Jones, September 9, 1996, A.G. Op. #96-0622.

§ 41-29-177. Procedure for disposition of seized property; petition of forfeiture; inquiry into ownership; failure to discover owner.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 41-29-177(10) provides procedure for forfeiture of property where owner of property cannot be served with copy of petition and/or where there was no person in possession of property at time it was seized. Magee, Jan. 8, 1993, A.G. Op. #92-0909.

Miss. Code Section 41-29-177(2) provides that petition for forfeiture of seized property may be filed "in the name of the State of Mississippi, the county or the municipality"; because petition is to be brought in name of county and not in name of law enforcement agency, county, acting through board of supervisors, has authority to decide whether or not it will pay private attorney to maintain forfeiture proceeding on county's behalf. Brumley, Jan. 8, 1993, A.G. Op. #92-0991.

Procedure for making forfeiture expenditures out of sheriff's budget is provided for in Miss. Code Section 41-29-177(2). Brumley, Jan. 8, 1993, A.G. Op. #92-0991.

Based on Section 41-29-177, service of process providing notice should be served in the same manner as in civil cases. All diligent efforts should be made to provide actual notice when at all possible. Notice by publication should be used only in the event that the owner of the property to be seized is unknown and diligent efforts to ascertain the identity or whereabouts of such owner fail. Alldredge, May 3, 1996, A.G. Op. #96-0269.

A city could institute a forfeiture action with regard to cash found on the person of a dead suspected local drug dealer where the deceased's mother was believed to have resided in California, there had been no contact with her since 1996, she was believed to have died, and it was unknown whether the deceased had any other relatives. Strahan, Nov. 10, 2000, A.G. Op. #2000-0638.

The manner in which deadly weapons should be disposed of depends on the manner in which they were seized; specifically, Section 41-29-177 provides for the manner in which a weapon that has been seized and forfeited under the Uniform Controlled Substances Law should be disposed of; for all other deadly weapons that are seized, Section 45-9-151 should be followed; Section 21-39-21 is a general statute with regard to lost, stolen, abandoned, or misplaced property, but Section 45-9-151 is specific to deadly weapons and therefore the more specific statute should be followed. Malta, May 26, 2000, A.G. Op. #2000-0221.

§ 41-29-179. Procedure for disposition of seized property; answer; hearing; burden of proving property subject to forfeiture; disposition after court's finding; summary forfeiture of controlled substances, raw material and paraphernalia.

OPINIONS OF THE ATTORNEY GENERAL

A city could institute a forfeiture action with regard to cash found on the person of a dead suspected local drug dealer where the deceased's mother was believed to have resided in California; there had been no contact with her since 1996 and she was believed to have died, and it was unknown whether the deceased had any other relatives. Strahan, Nov. 10, 2000, A.G. Op. #2000-0638.

An answer or pleading filed under Section 41-29-179 should be signed by the attorney filing the pleading or, if no attorney, by the individual filing the pleading.

In either case the pleading need not be verified. Davis, May 26, 2006, A.G. Op. 06-0199.

§ 41-29-181. Procedure for disposition of seized property; order directing disposition by bureau of narcotics.

OPINIONS OF THE ATTORNEY GENERAL

Office of district attorney may participate in drug forfeiture proceeds. Mellen, Sept. 10, 1992, A.G. Op. #92-0254.

Municipality could use state forfeiture funds to purchase police cars for law enforcement purposes but when forfeiture funds are received, municipality must amend its budget. Bobo, March 15, 1994, A.G. Op. #94-0105.

The office of the district attorney may participate in drug forfeiture proceeds under Section 41-29-181. Evans, May 10, 1996, A.G. Op. #96-0280.

A law enforcement agency should contact the Director of the Bureau of Narcotics for the use of forfeited controlled substances for training or demonstration purposes under §§ 41-29-154 and 41-29-181. Genin, April 16, 1999, A.G. Op. #99-0169.

In the context of forfeitures under the statute, the "initiating agency" is the entity filing the petition for forfeiture; the parties to an interlocal agreement may provide in that agreement which entity will be responsible for such filings, but this duty may not be assigned to a drug task force directly. Stewart, Jan. 21, 2000, A.G. Op. #99-0728.

Monies seized by an initiating agency cannot be equally divided to all participating agencies in the interlocal agreement. Stewart, Jan. 21, 2000, A.G. Op. #99-0728.

There is no authority that would permit sale of guns and weapons by sealed bids received solely from licensed gun dealers. Sweat, Sept. 27, 2002, A.G. Op. #02-0511.

Contributing forfeited funds to a drug task force is a valid law enforcement purpose, therefore, a district attorney may contribute funds that are received by his office as a result of drug forfeiture to a drug task force. McDonald, Dec. 6, 2002, A.G. Op. #02-0699.

Proceeds of drug forfeitures may be used for the construction of a jail as well as a weight and exercise room for the use of the employees of the sheriff's department. Morrow, Nov. 19, 2004, A.G. Op. 04-0539.

A municipality may use forfeited funds to purchase real property for use as a police firing range. Bobo, No. 11, 2004, A.G. Op. 04-0562.

In the event the agencies in Section 41-29-181(2)(b) cannot agree on an equitable division of proceeds, a petition shall be filed by any one of the agencies in the court in which the civil forfeiture case is brought and the court shall make an equitable division. Farris, Apr. 28, 2006, A.G. Op. 06-0142.

Drug forfeiture funds properly forfeited may be donated by check to the appropriate entity for any law enforcement purpose, including but not limited to training expenses for city and county narcotics units and computer equipment for the Circuit Court. Parrish, March 9, 2007, A.G. Op. #07-00116, 2007 Miss. AG LEXIS 91.

§ 41-29-185. Disposition of forfeited property transferred pursuant to federal property sharing provisions.

OPINIONS OF THE ATTORNEY GENERAL

Employment of counsel to represent the city police department in criminal forfeiture and other law enforcement matters is an appropriate expenditure of drug forfeiture funds. Scott, Mar. 18, 1992, A.G. Op. #91-0171.

Section 41-29-185, concerning disposition of seized and forfeited property pursuant to federal statutes, also applies to disposition of seized and forfeited property under state drug forfeiture statutes; funds properly forfeited pursuant to court order may be used for any law enforcement purpose, including salaries of law enforcement personnel. Mercer Dec. 9, 1993, A.G. Op. #93-0864.

Drug forfeiture funds properly forfeited may be donated by check to the appropriate entity for any law enforcement purpose, including but not limited to training expenses for city and county narcotics units and computer equipment for the Circuit Court. Parrish, March 9, 2007, A.G. Op. #07-00116, 2007 Miss. AG LEXIS 91.

ARTICLE 5.

OTHER NARCOTIC DRUG REGULATIONS.

§ 41-29-313. Purchase, possession, transfer, manufacture or distribution of listed chemical or drug with intent to unlawfully manufacture controlled substance prohibited; possession of anhydtrous ammonia in unauthorized container constitutes prima facie evidence of intent to unlawfully manufacture controlled substance; purchase, possession, transfer or distribution of certain quantities of ephedrine and pseudoephedrine prohibited; rebuttable presumption of intent to manufacture for person in possession of certain quantities of ephedrine or pseudoephedrine; enhanced penalties for certain violations.

OPINIONS OF THE ATTORNEY GENERAL

A violation of Section 41-29-313 (2)(c)(i) may consist of possession of less than 250 dosage units but more than 15 grams, or less than 15 grams but more than 250 dosage units. Under either scenario the penalty under Section 41-29-313(2)(d) is the same. Luther, May 19, 2006, A.G. Op. 06-0180.

ARTICLE 7.

INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS.

§ 41-29-507. Bureau of Narcotics only agency authorized to possess, operate, etc. monitoring devices; exceptions.

OPINIONS OF THE ATTORNEY GENERAL

A private individual not associated with any agency of the state or its political subdivisions may be charged and prosecuted under the statute. Jones, August 21, 1998, A.G. Op. #98-0462.

CHAPTER 30.

ALCOHOLISM AND ALCOHOL ABUSE PREVENTION, CONTROL AND TREATMENT

Sec.
41-30-27. Emergency involuntary commitment; alcoholics; drug addicts.

§ 41-30-1. Title.

OPINIONS OF THE ATTORNEY GENERAL

There is no indication that Sections 41-30-1 et seq. and Sections 41-21-61 et seq. are in anyway interchangeable and to admit or commit individual under mistaken statutory provision is denial of due process rights. Presley, March 3, 1994, A.G. Op. #93-0999.

§ 41-30-27. Emergency involuntary commitment; alcoholics; drug addicts.

(1)(a) A person may be admitted to an approved public or private treatment facility for emergency care and treatment upon a decree of the chancery court accepting an application for admission thereto accompanied by the certificate of two (2) licensed physicians. The application shall be to the chancery court of the county of such person's residence and may be made by any one (1) of the following: Either certifying physician, the patient's spouse or guardian, any relative of the patient, or any other person responsible for health, safety or welfare of all or part of the citizens within said chancery court's territorial jurisdiction. The application shall state facts to support the need for immediate commitment, including factual allegations showing that the person to be committed has threatened, attempted or actually inflicted physical harm upon himself or another. The physicians' certificates shall state that they examined the person within two (2) days of the certificate date and shall set out the facts to support the physicians' conclusion that the person is an alcoholic or drug addict who has lost the

power of self-control with respect to the use of alcoholic beverages or habit-forming drugs and that unless immediately committed he is likely to inflict physical harm upon himself or others. A hearing on such applications shall be heard by the chancery court in term time or in vacation, and the hearing shall be held in the presence of the person sought to be admitted unless he fail or refuse to attend. Notice of the hearing shall be given to the person sought to be admitted, as soon as practicable after the examination by the certifying physicians, and the person sought to be admitted shall have an opportunity to be represented by counsel, and shall be entitled to have compulsory process for the attendance of witnesses.

(b) For the purpose of this section, the term "drug addict" shall have the meaning ascribed to it by Section 41-31-1(d).

(2) The chancery judge may refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment. Upon acceptance of the application after hearing thereon and decree sustaining the application by the judge, the person shall be transported to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse or the patient's guardian. The person shall be retained at the facility that admitted him, or be transferred to any other appropriate treatment resource, until discharged pursuant to subsection (3).

(3) The attending physician shall discharge any person committed pursuant to this section when he determines that the grounds for commitment no longer exist, but no person committed pursuant to this section shall be retained in any facility for more than five (5) days.

(4) The application filed pursuant to subsection (1) of this section shall also contain an affidavit for involuntary commitment pursuant to Title 41, Chapter 31, Mississippi Code of 1972. If the application for emergency involuntary commitment is accepted under subsection (2) of this section, the chancery judge shall order a hearing on the affidavit for commitment pursuant to Title 41, Chapter 31, Mississippi Code of 1972, to be held on the fifth day of such involuntary emergency commitment, the provisions of Section 41-31-5 regarding the time of hearing to the contrary notwithstanding; provided, however, that at the time of such involuntary commitment the alleged alcoholic or drug addict shall be served with a citation to appear at said hearing and shall have an opportunity to be represented by counsel.

HISTORY: Laws, 1974, ch. 562, § 9; Laws, 1983, ch. 335, eff from and after passage (approved March 14, 1983); Laws, 2019, ch. 468, § 22, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (4), substituted "affidavit" for "petition" twice and made a related change.

§ 41-30-33. Confidentiality of records; conditions for disclosure.

OPINIONS OF THE ATTORNEY GENERAL

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. McGee, Dec. 2, 2002, A.G. Op. #02-0543.

CHAPTER 31.

COMMITMENT OF ALCOHOLICS AND DRUG ADDICTS FOR TREATMENT

Sec.

§ 41-31-1. Definitions.

As used in this chapter, the following words and phrases shall have the meanings ascribed to them, unless the context requires a different meaning:

(a) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or any person who, while chronically under the influence of alcoholic beverages, endangers public morals, health, safety or welfare.

(b) "Alcoholic beverage" means alcoholic spirits, liquors, wines, beer, and every liquid or fluid, patented or not, containing alcoholic spirits, wine or beer, which is capable of being consumed by human beings and produces or results in intoxication in any form or degree.

(c) "Alcoholism" means any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages.

(d) "Drug addict" means any person who chronically and habitually uses any form of habit-forming drugs, such as opioids, opiates and the derivatives thereof, barbiturates, and every tablet, powder, substance, liquid or fluid, patented or not, containing habit-forming drugs if same is capable of being used by human beings and produces drug addiction in any form or degree.

(e) "Drug addiction" means any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of habit-forming drugs.

(f) "Hospital" or "institution" means either the Mississippi State Hospital, at Whitfield, Mississippi, or the East Mississippi State Hospital, at Meridian, Mississippi, and shall include the grounds thereof and the facilities used for the treatment of alcoholics and the drug addicts.

(g) "Medical director" means the physician in charge of: (i) Mississippi State Hospital, or (ii) East Mississippi State Hospital, as the case may be.

HISTORY: Codes, 1942, § 436-01; Laws, 1950, ch. 349, § 1; Laws, 2019, ch. 468, § 12, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "means" for "shall mean" throughout the section; deleted "and include" preceding "alcoholic spirits" in (b) and preceding "any condition of abnormal behavior" in (e); inserted "opioids" in (d); inserted "(i)" and "(ii)" in (g); and made minor stylistic changes throughout.

OPINIONS OF THE ATTORNEY GENERAL

The department of public safety of a community hospital does not have authority to issue traffic citations on the public streets surrounding the hospital or to persons operating a motor vehicle on the hospital's premises. Castle, Nov. 14, 2005, A.G. Op. 05-0498.

§ 41-31-3. Development of Uniform Alcohol and Drug Commitment Affidavit to initiate commitment proceedings; development of Uniform Alcohol and Drug Commitment Guide outlining steps in commitment process.

(1) The Department of Mental Health must develop a Uniform Alcohol and Drug Commitment Affidavit to be utilized in all counties to initiate commitment proceedings under Title 41, Chapters 30, 31 and 32, Mississippi Code of 1972. The Uniform Alcohol and Drug Commitment Affidavit must be provided by the clerk of the chancery court to any party or affiant seeking a civil commitment under this chapter and also must be made available to the public on the website of the Mississippi Department of Mental Health.

(2) The Department of Mental Health, in consultation with the Mississippi Chancery Clerks Association, the Mississippi Conference of Chancery Court Judges and the Mississippi Association of Community Mental Health Centers, must develop a written guide no later than January 1, 2020, setting out the steps in the commitment process. The guide shall be designated as the "Uniform Alcohol and Drug Commitment Guide" and shall include, but not be limited to, the following:

(a) Steps in the alcohol and drug commitment process from affidavit to commitment, written in easily understandable layman's terms;

(b) A schedule of fees and assessments that will be charged to commence a commitment proceeding under this chapter;

(c) Eligibility requirements and instructions for filing a pauper's affidavit; and

(d) A statement on the front cover of the guide advising that persons who pursue an alcohol and drug commitment under this chapter are not required to retain an attorney for any portion of the commitment process.

(3) As soon as available but no later than January 1, 2020, the Uniform Alcohol and Drug Commitment Guide must be provided by the clerk of the chancery court to any party or affiant seeking a civil commitment under this chapter, and also must be made available to the public on the website of the Mississippi Department of Mental Health.

(4) Proceedings for detention, care and treatment of any person alleged to be an alcoholic or drug addict may be initiated or instituted by such person's husband, wife, child, mother, father, next of kin, or by any friend or relative thereof, or by the county health officer. Such proceedings shall be instituted by the filing of the Uniform Alcohol and Drug Commitment Affidavit in the chancery court of the county of such person's residence or of the county in which he may be found. It shall be necessary that the affidavit allege that such person is an alcoholic or drug addict, as the case may be, is a resident citizen of this state, and because of his alcoholism or drug addiction is incapable of or unfit to look after and conduct his affairs, or is dangerous to himself or others, or has lost the power of self-control because of periodic, constant or frequent use of alcoholic beverages or habit-forming drugs, and that he is in need of care and treatment, and that his detention, care and treatment at an institution will improve his health. A chancery clerk may not require an affiant to retain an attorney for the filing of an affidavit under this section. All proceedings authorized by this chapter may be had and conducted either in termtime or in vacation of said court.

HISTORY: Codes, 1942, § 436-02; Laws, 1950, ch. 349, § 2; Laws, 1976, ch. 401, § 7, eff from and after July 1, 1976; Laws, 2019, ch. 468, § 13, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added (1) through (3), and designated the formerly undesignated paragraph (4); in (4), substituted "filing of the Uniform Alcohol and Drug Commitment Affidavit" for "filing of a sworn petition or application" in the first sentence, substituted "the affidavit" for "said petition" in the second sentence, and added the next-to-last sentence.

§ 41-31-5. Proceedings for inpatient commitment or outpatient treatment; presence of attorney.

(1) Whenever an affidavit is filed, the chancellor of said court shall, by order, fix a time upon a day certain for the hearing thereof, either in termtime or in vacation, which hearing shall be fixed not less than five (5) days nor more than twenty (20) days from the filing of the affidavit. The person alleged to be an alcoholic or drug addict shall be served with a citation to appear at said hearing not less than three (3) days prior to the day fixed for said hearing, and there shall be served with such citation a true and correct copy of the affidavit.

(2) The clerk must ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk immediately must notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor shall appoint an attorney for the respondent before a hearing on the affidavit.

(3) At the time fixed, the chancellor shall hear evidence on the affidavit, with or without the presence of the alleged alcoholic or drug addict, and all persons interested shall have the right to appear and present evidence touching upon the truth and correctness of the allegations of the affidavit. The said chancellor, in his discretion, may require that the alleged alcoholic or drug addict be examined by the county health officer or by such other competent physician or physicians as the chancellor may select, and may consider the results of such examination in reaching a decision in said matter.

(4) If the alleged alcoholic or drug addict shall admit the truth and correctness of the allegations of the affidavit, or if the chancellor should find from the evidence that such person is an alcoholic or drug addict, and is in need of detention, care and treatment in an institution, and that the other material allegations of said petition are true, then he shall enter an order so finding, and shall order that such person be remanded and committed to and confined in the proper state institution under this chapter or a private treatment facility under the provisions of Title 41, Chapter 32, Mississippi Code of 1972, or, in the case of an alcoholic to an approved public or private treatment facility pursuant to the provisions of Title 41, Chapter 30, Mississippi Code of 1972, for care and treatment for a period of not less than thirty (30) days nor more than ninety (90) days as the necessity of the case may, in his discretion, require. However, when such person shall be so committed, the medical director of the said institution shall be vested with full discretion as to the treatment and discharge of such person, and may discharge and release such person at any time when the condition of such person shall so justify.

(5)(a) If the chancellor determines under this section that the alleged alcoholic or drug addict is in need of care and treatment but also affirmatively finds that the alleged alcoholic or drug addict would benefit from the less restrictive option of an outpatient treatment program, the chancellor, in his discretion and upon agreement of both the affiant and the person in need of treatment, may order the alleged alcoholic or drug addict into an outpatient treatment program.

(b) If the order directs outpatient treatment, the outpatient treatment provider may prescribe or administer to the respondent treatment consistent with accepted alcohol and drug abuse treatment standards. If the respondent fails or clearly refuses to comply with outpatient treatment, the director of the treatment program, his designee or an interested person must make all reasonable efforts to solicit the respondent's compliance. These efforts must be documented and, if the respondent fails or clearly refuses to comply with outpatient treatment after the efforts are made, the efforts must be documented with the court by affidavit. Upon the filing of the affidavit, the

sheriff of the proper county may take the respondent into custody. The chancellor thereafter may order the respondent to inpatient treatment as soon as a treatment facility is available.

(c) The respondent may request a hearing within ten (10) days of commitment to inpatient treatment by filing a written request with the chancery clerk of the committing court, or the respondent may request such a hearing in writing to any member of the professional staff of the treatment facility, which must be forwarded to the director and promptly filed with the chancery clerk of the committing court. The respondent must be advised of the right to request such a hearing and of the right to consult a lawyer.

HISTORY: Codes, 1942, § 436-03; Laws, 1950, ch. 349, § 3; Laws, 1974, ch. 562, § 14, eff from and after July 1, 1974; Laws, 2019, ch. 468, § 14, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment designated the former first two sentences of the section (1), added (2), designated the former third and fourth sentences (3), designated the former last two sentences (4) and added (5); substituted references to "affidavit" for references to "petition" throughout the section; and inserted "under this chapter" and "a private treatment facility under the provisions of Title 41, Chapter 32, Mississippi Code of 1972, or" in the first sentence of (4); and made minor stylistic changes.

§ 41-31-11. Transferring of patients; written notification of transfer to committing court.

The medical director of the Mississippi State Hospital or the East Mississippi State Hospital may, subject to the regulations of the board of trustees of mental institutions, transfer alcoholics or drug addicts from one institution used for the commitment of alcoholics and drug addicts to another institution, or from one department in any institution to another as is deemed necessary for their care and treatment. The medical director must provide the committing court with written notification of the transfer, including the name of the facility or program to which the alcoholic or addict is transferred.

HISTORY: Codes, 1942, § 436-06; Laws, 1950, ch. 349, § 6; Laws, 2019, ch. 468, § 15, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the last sentence.

§ 41-31-17. Rights as citizens; confidentiality of records.

OPINIONS OF THE ATTORNEY GENERAL

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. McGee, Dec. 2, 2002, A.G. Op. #02-0543.

§ 41-31-18. Continuing jurisdiction of court over person committed to inpatient or outpatient treatment for one year after treatment completed; recommitment.

The court shall have continuing jurisdiction over a person committed to an inpatient or outpatient treatment program under this chapter for one (1) year after completion of the treatment program. During that time and upon affidavit in the same cause of action, the court may conduct a hearing consistent with this chapter or Title 41, Chapter 21, Mississippi Code of 1972, to determine whether the person needs to be recommitted for further alcohol and drug treatment or to determine whether the person suffers from a mental or nervous condition or affliction requiring commitment for mental health treatment. Upon a finding by the court that the person is in need of further treatment, the court may commit the person to an appropriate treatment facility. The person subject to commitment must be afforded the due process entitled to him or her under Title 41, Chapters 21 and 31, Mississippi Code of 1972. This section may not be construed so as to conflict with the provisions of Section 41-21-87.

HISTORY: Laws, 2019, ch. 468, § 16, eff from and after July 1, 2019.

CHAPTER 32.

COMMITMENT OF ALCOHOLICS AND DRUG ADDICTS TO PRIVATE TREATMENT FACILITIES

Sec.

§ 41-32-1. Scope of chapter; involuntary commitment upon judgment of chancery court.

OPINIONS OF THE ATTORNEY GENERAL

Fee in alcohol/drug commitment proceedings is $75. Jones Nov. 10, 1993, A.G. Op. #93-0514.

§ 41-32-3. Filing Uniform Alcohol and Drug Commitment Affidavit for judgment of committal.

Any interested person may file a Uniform Alcohol and Drug Commitment Affidavit with the chancery court for a judgment of committal in termtime or

in vacation. The affidavit shall state facts to establish: (a) the defendant is an alcoholic or drug addict, i.e., he is powerless over alcohol or drugs, or both, and his life has thereby become unmanageable; (b) defendant's mental and physical health, his continued family life or his position in the community are dependent on his treatment at a chemical dependency unit, alcohol and drug unit, outpatient house or another private treatment facility, or combination of facilities, providing treatment for chemically dependent persons; (c) the defendant has refused to commit himself to such private treatment facility, though having been requested so to do by persons who genuinely care for his well-being; (d) the affiant has selected a particular private treatment facility which, if located in this state, has been approved by the Department of Mental Health, Division of Alcohol and Drug Abuse; (e) the affiant has made adequate financial arrangements for defendant's treatment at such facility; and (f) such facility has approved the admission of the defendant, subject to commitment by the chancery court.

HISTORY: Laws, 1983, ch. 456, § 2, eff from and after July 1, 1983; Laws, 2019, ch. 468, § 17, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "file a Uniform Alcohol and Drug Commitment Affidavit" for "file a complaint" in the first sentence; and substituted "affidavit" for "complaint" and "affiant" for "complainant" in the second sentence.

§ 41-32-5. Hearing; presence of attorney; order for commitment; period of confinement.

(1) The chancellor shall schedule with the affiant a time on a day certain for the hearing thereof, not less than five (5) days nor more than twenty (20) days from the filing of the affidavit. The case shall be triable upon three (3) days' service of process and service of notice of the time for the hearing. At the time fixed, the chancellor shall hear the evidence in the presence of the defendant if he will appear, and without the presence of the defendant if he will not appear, and all persons interested shall have the right to appear and present evidence touching upon the truth and correctness of the allegations of the affidavit.

(2) The clerk must ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk immediately must notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor must appoint an attorney for the respondent before a hearing on the affidavit.

(3) If the defendant admits the truth and correctness of the allegations of the affidavit, or if the chancellor shall find from the evidence that the defendant is an alcoholic or drug addict, or both, and is in need of detention, care and treatment in a private treatment facility, and that the other material allegations of the affidavit are true, then the chancellor shall enter a judgment so finding, and shall order that such person be committed to and confined in a

chemical dependency unit, alcohol and drug unit, outpatient house or any other private treatment facility, within or outside the state, for the treatment of chemically dependent persons, as the chancellor, in his discretion, deems to be in the best interest of the defendant. Any such order for the commitment of the defendant shall require that the defendant be committed for such period of time as the chancellor shall determine, in his discretion, as is necessary to provide for the care and treatment of the defendant or for such other period of time as may be established by authorized personnel at the designated facility or facilities; however, in no event shall such period of confinement extend beyond a period of eight (8) months. The chancellor may require treatment at a combination of facilities or may designate commitment at an inpatient facility for not more than two (2) months and an outpatient facility for not more than six (6) months, subject to institutional earlier release.

HISTORY: Laws, 1983, ch. 456, § 3, eff from and after July 1, 1983; Laws, 2019, ch. 468, § 18, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment designated the former first two sentences of the section (1), added (2), and designated the former last three sentences of the section (3); substituted "affidavit" for "complaint" throughout (1) and (3); and made a minor stylistic change.

§ 41-32-7. Earlier hearing for defendant who could flee jurisdiction or cause physical harm; interim commitment.

Upon allegation in the affidavit and upon clear and convincing proof that the defendant is under the influence of alcohol or drugs, or both, to the extent that if the defendant is served with process he will, in all likelihood, flee the jurisdiction of the court or physically harm himself or others, then the chancellor may, in his discretion, set the matter for hearing not more than five (5) days, excluding Saturdays, Sundays and legal holidays, from the filing of the affidavit, and order the defendant committed and confined, without notice, until the hearing, to a chemical dependency unit, alcohol and drug unit, outpatient house or any other private facility for the treatment of chemically dependent persons.

HISTORY: Laws, 1983, ch. 456, § 4, eff from and after July 1, 1983; Laws, 2019, ch. 468, § 19, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "affidavit" for "complaint" twice.

§ 41-32-11. Assistance of county sheriff in confining and transporting defendant.

The chancellor may order assistance by the sheriff of the county, or any other county in confining and transporting the defendant to the facility, at the expense of the committing county.

HISTORY: Laws, 1983, ch. 456, § 6, eff from and after July 1, 1983; Laws, 2019, ch. 468, § 20, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "the committing county" for "complainant" at the end.

CHAPTER 37.

AUTOPSIES

Sec.
41-37-25. Autopsy may be performed when consent thereto is given.

§ 41-37-9. Autopsy under court order; procedure.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental Health, in whose custody the patient died. Hendrix, Apr. 23, 2004, A.G. Op. 04-0161.

§ 41-37-23. Autopsy may be ordered on petition of certain health officials.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental Health, in whose custody the patient died. Hendrix, Apr. 23, 2004, A.G. Op. 04-0161.

§ 41-37-25. Autopsy may be performed when consent thereto is given.

An autopsy may be performed without court order by a qualified physician when authorized by (a) the decedent, during his lifetime, or (b) any of the following persons who have assumed custody of the body for the purpose of burial: a surviving spouse, either parent or any person in loco parentis, a descendant over the age of eighteen (18) years, a guardian, or the next of kin. In the absence of any of the foregoing persons any friend of the deceased who has assumed responsibility for burial, or any other person charged by law with responsibility for burial, may give such consent. If two (2) or more persons have assumed custody of the body of an adult for purposes of burial, the consent of one (1) such person shall be deemed sufficient.

In the case of a minor, however, the consent of either parent shall be deemed sufficient, unless the other parent gives written notice to the physician who is to perform the autopsy of such parent's objection thereto before the beginning of the autopsy. If neither parent has legal custody of the minor, the guardian shall have the right to authorize an autopsy. The fees provided in this chapter for autopsies in criminal investigations shall not be applicable to this section.

No autopsy shall be held under this section over the objection of the

surviving spouse, or if there be no surviving spouse, of any surviving parent, or if there be neither a surviving spouse nor parent, then of any surviving child.

If the body has already been buried, consent to disinterment of the body for an autopsy without a court order shall be governed by Section 41-43-59.

HISTORY: Codes, 1942, § 7158-08; Laws, 1960, ch. 258, § 9, eff from and after passage (approved May 11, 1960); Laws, 2021, ch. 335, § 2, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the first paragraph, inserted "(18)," "(2)," and "(1)," and made a stylistic change; in the second paragraph, substituted "before the beginning of the autopsy" for "prior to the commencement of the autopsy" in the first sentence, and "If neither" for "In the event neither" in the second sentence; and added the last paragraph.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental Health, in whose custody the patient died. Hendrix, Apr. 23, 2004, A.G. Op. 04-0161.

CHAPTER 39.

DISPOSITION OF HUMAN BODIES OR PARTS

IN GENERAL

§ 41-39-5. Disposition of unclaimed dead bodies.

OPINIONS OF THE ATTORNEY GENERAL

Based on Section 41-39-5, if the county coroner has no available means of preserving a dead body until family members can make arrangements for a burial or cremation, the county board of supervisors has the duty to make arrangements for the preservation of such a body until family members may make such arrangements. Hemphill, August 30, 1996, A.G. Op. #96-0586.

In a case where the coroner has determined that an autopsy is not necessary and the next of kin cannot be reached, the board of supervisors has the duty to make arrangements for the transportation and preservation of the body until family members may make arrangements, and any expenses incurred by the county would ultimately be the responsibility of decedent's estate or that person liable at law for the necessities of the decedent during his or her lifetime. Williams, Jan. 24, 2003, A.G. Op. #02-0727.

A board of supervisors has the authority to bury unclaimed bodies, identified paupers, and unknown strangers after an order has been spread on their official board minutes; however, these laws do not contemplate the county supplementing or reimbursing persons merely claiming to be or have been paupers solely to gain funeral assistance for the family. Chamberlin, May 9, 2003, A.G. Op. #03-0214.

§ 41-39-13. Tags on bodies of persons with infectious or communicable diseases.

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Section 41-39-13, medical examiner should place "toe tag" on body only if he knows that deceased was infected with agent which causes infectious or communicable disease, and that he is under no obligation to attempt to identify presence of such agent for purpose of tagging body. Cobb, Jan. 4, 1993, A.G. Op. #92-0838.

REVISED MISSISSIPPI UNIFORM ANATOMICAL GIFT ACT (UAGA)

Sec.
41-39-117. Who may make anatomical gift of decedent's body or part.

§ 41-39-117. Who may make anatomical gift of decedent's body or part.

(a) Subject to subsections (b) and (c) and unless barred by Section 41-39-113 or 41-39-115, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under Section 41-39-107(2) immediately before the decedent's death;

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) An adult who exhibited special care and concern for the decedent;

(9) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one (1) member of a class listed in subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 41-39-121 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the

decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

(d) If the decedent's body has already been buried, consent to disinterment of the body for any one or more of the purposes specified in subsection (a) of this section shall be governed by Section 41-43-59.

HISTORY: Laws, 2008, ch. 561, § 9; reenacted without change, Laws, 2012, ch. 346, § 9; reenacted without change, Laws, 2014, ch. 315, § 9, eff from and after July 1, 2014; Laws, 2021, ch. 335, § 3, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment added (d).

CHAPTER 41.

SURGICAL OR MEDICAL PROCEDURES; CONSENTS

IN GENERAL

§ 41-41-11. Waiver of medical privilege.

OPINIONS OF THE ATTORNEY GENERAL

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. McGee, Dec. 2, 2002, A.G. Op. #02-0543.

PERFORMANCE OF ABORTION; CONSENT

Sec.
41-41-34.1. Performance of abortion of unborn human individual with a detectable heartbeat prohibited; exceptions.

§ 41-41-33. Consent; written certification.

OPINIONS OF THE ATTORNEY GENERAL

A woman may be told the information required in Section 41-41-33(a) through a telephone conference. Thompson, May 5, 1995, A.G. Op. #95-0318.

§ 41-41-34.1. Performance of abortion of unborn human individual with a detectable heartbeat prohibited; exceptions.

(1) As used in this section:

(a) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(b) "Physician" means a person licensed to practice medicine under Section 73-25-1 et seq.

(c) "Unborn human individual" means an individual organism of the species homo sapiens from fertilization until live birth.

(2)(a) Except as provided in paragraph (b) or (c) of this subsection (2), no person shall knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual that the pregnant woman is carrying and whose fetal heartbeat has been detected. Any person who acts based on the exception in paragraph (b) or (c) of this subsection (2) shall so note in the pregnant woman's medical records and shall specify in the pregnant woman's medical records which of the exceptions the person invoked.

(b)(i) A person is not in violation of paragraph (a) of this subsection (2) if that person performs a medical procedure designed to or intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(ii) Any person who performs a medical procedure as described in paragraph (b)(i) of this subsection (2) shall declare in writing, under penalty of perjury, that the medical procedure was necessary, to the best of that person's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. That person shall also provide in that written document, under penalty of perjury, the medical condition of that pregnant woman that the medical procedure performed as described in paragraph (b)(i) of this subsection (2) will assertedly address, and the medical rationale for the conclusion that the medical procedure was necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(iii) The person who performs a medical procedure as described in paragraph (b)(i) of this subsection (2) shall place the written documentation required under paragraph (b)(ii) of this subsection (2) in the pregnant woman's medical records, and shall maintain a copy of the written documentation in the person's own records for at least seven (7) years.

(c) A person is not in violation of paragraph (a) of this subsection (2) if that person has performed an examination for the presence of a fetal heartbeat in the unborn human individual using standard medical practice and that examination does not reveal a fetal heartbeat or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat.

(d) This subsection (2) does not repeal any other provision of the Mississippi Code that restricts or regulates the performance of an abortion by a particular method or during a particular stage of a pregnancy.

(e) Any person who violates this subsection (2) is guilty of performing an abortion after the detection of a fetal heartbeat, a violation punishable as provided in Section 41-41-39.

HISTORY: Laws, 2019, ch. 349, § 1, eff from and after July 1, 2019.

GESTATIONAL AGE ACT

§ 41-41-191. Gestational Age Act; legislative findings and purpose; definitions; abortion limited to fifteen weeks' gestation; exceptions; requisite report; reporting forms; professional sanctions; civil penalties; additional enforcement; construction; severability; right to intervene if constitutionality challenged.

JUDICIAL DECISIONS

1. Constitutionality.

Mississippi's Gestational Age Act, prohibiting abortions, with limited exceptions, after 15 weeks' gestational age, was properly found invalid because it was an unconstitutional ban on pre-viability abortions, as opposed to a regulation, and therefore the State's interests could not outweigh the woman's right to choose an abortion. Jackson Women's Health Org. v. Dobbs, 945 F.3d 265, 2019 U.S. App. LEXIS 36957 (5th Cir. Miss. 2019).

LIFE EQUALITY ACT OF 2020

Sec.

§ 41-41-401. Title.

Sections 41-41-401 through 41-41-419 shall be known and may be cited as the "Life Equality Act of 2020."

HISTORY: Laws, 2020, ch. 434, § 1, eff from and after July 1, 2020.

§ 41-41-403. Legislative findings and purpose.

(1) The Legislature finds:

(a) The United States Supreme Court has been "zealous in vindicating the rights of people even potentially subjected to race, sex, and disability discrimination." *Box v. Planned Parenthood of Indiana and Kentucky, 139 S.Ct. 1780, 1792 (2019)* (Thomas J., concurring) (citing *Pena-Rodriguez v. Colorado*, 580 U.S. ___, ___ (2017) (slip op., at 15) (condemning "discrimina-

tion on the basis of race" as "'odious in all aspects'"); *United States v. Virginia, 518 U.S. 515, 532 (1996)* (denouncing any "law or official policy [that] denies to women, simply because they are women...equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities"); *Tennessee v. Lane, 541 U.S. 509, 522 (2004)* (condemning "irrational disability discrimination")).

(b) The inherent right against discrimination on the basis of race, sex, or genetic abnormality is protected in federal and state laws. For example, the 1964 Civil Rights Act (42 U.S.C. 2000e et seq.) and the laws of every state protect against discrimination on the basis of race or sex. The Rehabilitation Act of 1973 (29 U.S.C. 701), the Americans With Disabilities Amendments Act of 2010 (42 U.S.C. 12101, et seq.), and numerous state laws prohibit discrimination against individuals on the basis of a real or perceived physical or mental impairment that substantially limits one or more major life activities.

(c) Notwithstanding these protections, unborn human beings are often discriminated against and deprived of life.

(d) As Supreme Court Justice Clarence Thomas has noted, "Each of the immutable characteristics protected by this law can be known relatively early in a pregnancy, and this law prevents them from becoming the sole criterion for deciding whether the child will live or die." *Box v. Planned Parenthood of Indiana and Kentucky, 139 S.Ct. 1780, 1783 (2019)* (Thomas, J., concurring).

(e) "Abortion is an act rife with the potential for eugenic manipulation." *Id.* at 1787.

(f) The State of Mississippi maintains a "compelling interest in preventing abortion from becoming a tool of modern-day eugenics." *Id.*

(g) Sex-selection abortions are used to prevent the birth of a human being of the undesired sex. Its victims are overwhelming female.

(h) Despite equality under the law being guaranteed to all women in the United States and most of the developed world, sex-selection abortions continue to occur in the United States.

(i) Abortions predicated on the presence or presumed presence of genetic abnormalities continue to occur despite the increasingly favorable post-natal outcomes for human beings perceived as handicapped or disabled. Pharmaceutical treatments, gene therapies, and prosthetic advances have given formerly handicapped and disabled human beings much greater opportunities for survival and success than ever before. Importantly, surgical intervention now includes the availability of intrauterine surgery.

(2) Therefore, it is the intent of the Mississippi Legislature, through Sections 41-41-401 through 41-41-419 and any regulations and policies promulgated hereunder, to prohibit the practice of nontherapeutic or elective abortion for the purpose of terminating the life of an unborn human being because of that human being's race, sex, or the presence or presumed presence of a genetic abnormality.

HISTORY: Laws, 2020, ch. 434, § 2, eff from and after July 1, 2020.

§ 41-41-405. Definitions.

As used in Sections 41-41-401 through 41-41-419.

(a) "Abortion" means the use or prescription of an instrument, medicine, drug, or other substance or device with the intent to terminate a clinically diagnosable pregnancy for reasons other than to increase the probability of a live birth, to preserve the life or health of the unborn human being, to terminate an ectopic pregnancy, or to remove a dead unborn human being.

(b) "Attempt to perform or induce an abortion" means to do or omit anything that, under the circumstances as the person believes them to be, is an act or omission that constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in violation of this section.

(c) "Because of race" means on account of the actual or presumed race or racial makeup of the unborn human being.

(d) "Because of the presence of a genetic abnormality" means on account of the presence or presumed presence of an abnormal gene expression in the unborn human being, including, but not limited to, chromosomal disorders or morphological malformations occurring as the result of defective gene expression.

(e) "Because of sex" means on account of the actual or presumed sex of the unborn human being.

(f) "Conception" means the fusion of human spermatozoon with a human ovum.

(g) "Department" means the Mississippi State Department of Health.

(h) "Human being" means an individual member of the species Homo sapiens, from and after the point of conception.

(i) "Major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, and bladder, bowel, brain, circulatory, digestive, endocrine, neurological, reproductive, and respiratory functions.

(j) "Medical emergency" means a condition in which, on the basis of the physician's good-faith clinical judgment, an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function.

(k) "Physician" or "referring physician" means a person licensed to practice medicine in the State of Mississippi.

HISTORY: Laws, 2020, ch. 434, § 3, eff from and after July 1, 2020.

§ 41-41-407. Abortion may not be performed because of race, sex, or genetic abnormality except in a medical emergency.

(1) Except in a medical emergency as defined in paragraph (j) of Section 41-41-405, a person shall not perform, induce or attempt to perform or induce an abortion unless the physician who is to perform or induce the abortion has first confirmed that the abortion is not being sought because of the race or sex of the unborn human being or because of the presence or presumed presence of a genetic abnormality and documented these facts in the maternal patient's chart, as well as in the report to be filed with the department as set forth in subsection (4) of this section.

(2) Except in a medical emergency as defined in paragraph (j) of Section 41-41-405, a person shall not intentionally or knowingly perform, induce or attempt to perform or induce an abortion of an unborn human being if the abortion is being sought because of the actual or presumed race or sex of the unborn human being or because of the presence or presumed presence of a genetic abnormality.

(3) In every case in which a physician performs or induces an abortion on an unborn human being, the physician shall within fifteen (15) days of the procedure cause to be filed with the department, on a form supplied by the department, a report containing the following information:

(a) Date the abortion was performed;

(b) Specific method of abortion used;

(c) Whether the race of, sex of, or the presence or presumed presence of any genetic abnormality in the unborn human being had been detected at the time of the abortion by genetic testing (such as by maternal serum tests) or ultrasound (such as by nuchal translucency screening (NT)), or by other forms of testing;

(d) A statement confirming that the reason for the abortion, as stated by the maternal patient, was not because of the unborn human being's actual or presumed race or sex or the presence or presumed presence of any genetic abnormality; and

(e) Probable health consequences of the abortion and specific abortion method used.

The physician shall sign the form as his or her attestation under oath that the information stated thereon is true and correct to the best of his or her knowledge.

(4) Reports required and submitted under subsection (3) of this section shall not contain the name of the maternal patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

HISTORY: Laws, 2020, ch. 434, § 4, eff from and after July 1, 2020.

§ 41-41-409. Reporting forms.

The department shall create the forms required by Sections 41-41-401 through 41-41-419 within thirty (30) days after July 1, 2020. No provision of Sections 41-41-401 through 41-41-419 requiring the reporting of information on forms published by the department shall be applicable until ten (10) days after the requisite forms have been made available or July 1, 2020, whichever is later.

HISTORY: Laws, 2020, ch. 434, § 5, eff from and after July 1, 2020.

§ 41-41-411. Criminal penalties.

(1) Any person who intentionally or knowingly violates the prohibitions in Section 41-41-407(1) and/or (2) shall be guilty of a felony and shall, upon conviction, be imprisoned in the custody of the Department of Corrections not less than one (1) nor more than ten (10) years.

(2) A woman upon whom an abortion is performed, induced, or attempted in violation of this section shall not be prosecuted for conspiracy to commit any violation of this section.

HISTORY: Laws, 2020, ch. 434, § 6, eff from and after July 1, 2020.

§ 41-41-413. Professional sanction and civil penalties.

(1) A physician who intentionally or knowingly violates the prohibitions in Section 41-41-407(1) and/or (2) commits an act of unprofessional conduct and his or her license to practice medicine in the State of Mississippi shall be suspended or revoked pursuant to action by the Mississippi State Board of Medical Licensure.

(2) A physician who knowingly or intentionally delivers to the Department any report required by Section 41-41-407 and known by him or her to be false shall be subject to a civil penalty or fine up to Five Hundred Dollars ($500.00) per violation imposed by the department.

HISTORY: Laws, 2020, ch. 434, § 7, eff from and after July 1, 2020.

§ 41-41-415. Additional enforcement.

The Attorney General shall have authority to bring an action in law or equity to enforce the provisions of Sections 41-41-401 through 41-41-419 on behalf of the Director of the Mississippi State Department of Health or the Mississippi State Board of Medical Licensure. The Mississippi State Board of Medical Licensure shall also have authority to bring such action on its own behalf.

HISTORY: Laws, 2020, ch. 434, § 8, eff from and after July 1, 2020.

§ 41-41-417. Construction.

Nothing in Sections 41-41-401 through 41-41-419 shall be construed as

creating or recognizing a right to abortion or as altering generally accepted medical standards. It is not the intention of Sections 41-41-401 through 41-41-419 to make lawful an abortion that is otherwise unlawful. An abortion that complies with Sections 41-41-401 through 41-41-419, but violates any other state law, is unlawful. An abortion that complies with another state law, but violates Sections 41-41-401 through 41-41-419 is unlawful.

HISTORY: Laws, 2020, ch. 434, § 9, eff from and after July 1, 2020.

§ 41-41-419. Severability.

(1) It is the intent of the Legislature that every provision of Sections 41-41-401 through 41-41-419 shall operate with equal force and shall be severable one from the other and that, in the event that any provision of Sections 41-41-401 through 41-41-419 shall be held invalid or unenforceable by a court of competent jurisdiction, the provision shall be severable and the remaining provisions of Sections 41-41-401 through 41-41-419 shall be fully enforceable.

(2) In the event that any provision of Sections 41-41-401 through 41-41-419 shall be held invalid or unenforceable by a court of competent jurisdiction, the other sections shall remain in effect. If some or all of the provisions of Sections 41-41-401 through 41-41-419 are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of Mississippi law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; however, whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions of Sections 41-41-401 through 41-41-419 shall have full force and effect.

(3) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), regarding the context of determining the severability of a state section of law regulating abortion, the United States Supreme Court held that an explicit statement of legislative intent is controlling. Accordingly, it is the intent of the Legislature that every provision, section, subsection, paragraph, sentence, clause, phrase or word in Sections 41-41-401 through 41-41-419 and every application of the provisions in Sections 41-41-401 through 41-41-419 is severable from each other. If any application of any provision in Sections 41-41-401 through 41-41-419 to any person, group of persons, or circumstances is found by a competent court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of Sections 41-41-401 through 41-41-419 shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this statute to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not represent an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the Legislature had enacted a

section limited to the persons, group of persons, or circumstances for which the section's application does not present an undue burden. The Legislature further declares that it would have passed Sections 41-41-401 through 41-41-419 and each provision, section, subsection, paragraph, sentence, clause, phrase or word, and all constitutional applications of Sections 41-41-401 through 41-41-419, without regard to the fact that any provision, section, subsection, paragraph, sentence, clause, phrase or word, or applications of Sections 41-41-401 through 41-41-419, were to be declared unconstitutional or to represent an undue burden.

(4) If Sections 41-41-401 through 41-41-419 are found by any competent court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, the prohibition shall apply to that person or group of persons or circumstances on the earliest date on which this section can be constitutionally applied.

(5) If any provisions of Sections 41-41-401 through 41-41-419 are found by a competent court to be unconstitutionally vague, then the applications of the provision that do not present constitutional vagueness problems shall be severed and remain in force.

HISTORY: Laws, 2020, ch. 434, § 10, eff from and after July 1, 2020.

CHAPTER 43.

CEMETERIES AND BURIAL GROUNDS

IN GENERAL

§ 41-43-1. Regulation of cemeteries in the vicinity of hospitals; private family cemeteries.

OPINIONS OF THE ATTORNEY GENERAL

Section 41-43-1(2) does not give the board of supervisors the authority to establish or designate the location of any private family cemetery within municipal corporate limits in the county. Mullins, June 7, 1995, A.G. Op. #95-0340.

§ 41-43-3. Appointment of trustee for private or family cemetery or burying ground.

OPINIONS OF THE ATTORNEY GENERAL

A private family cemetery does not have to be set up as a trust. Section 41-43-3 deals only with the situation where a donation or bequest is made to be used for the maintenance and preservation of a private or family cemetery. Shannon, February 23, 1996, A.G. Op. #96-0077.

CEMETERY LAW

Sec.

§ 41-43-33. Who is subject to cemetery law.

OPINIONS OF THE ATTORNEY GENERAL

Since Section 41-43-33 only deals with people, partnerships or corporations engaged in the cemetery business, a private family cemetery which would not be selling would not be subject to the cemetery law. Shannon, February 23, 1996, A.G. Op. #96-0077.

§ 41-43-38. Operation as perpetual care cemetery; accounting and reporting requirements; penalties for failure to timely file requisite accountings, records, reports or notices; sale or transfer of perpetual care cemetery; audits; procedure if perpetual care cemetery becomes subject of court ordered receivership.

OPINIONS OF THE ATTORNEY GENERAL

Where a cemetery was never fully established and set up as a perpetual care cemetery, a court had jurisdiction and the authority to dismantle the perpetual care status of this cemetery, dissolve the corporate charter, and refund to the purchasers who had duly filed their paid receipts and contracts in the court whatever monies available. Barlow, Oct. 13, 2000, A.G. Op. #2000-0602.

§ 41-43-57. Application for release of trust principal for certain purposes under exceptional circumstances.

(1) In exceptional circumstances only, a perpetual care owner can make an application to the Secretary of State for an order directing the trustee to release trust principal for the extended care, maintenance or improvements to the perpetual care cemetery for which interest funds are insufficient. Before issuing such an order, the Secretary of State shall satisfy himself that the request is for a major capital expenditure that will advance the perpetual care life of the cemetery without undue risk to the solvency of the perpetual care trust fund. Consistent with this section, this shall be the only instance in which a perpetual care trust corpus may be utilized for cemetery maintenance and improvements. In the consideration of the application, the Secretary of State may require the production of any records deemed necessary and relevant to the cemetery's application for a major capital expenditure.

(2) In addition the authority provided under subsection (1) of this section,

subject to the provisions of Section 19-5-105(2) or 21-19-11(7), the board of supervisors of a county or the governing authority of a municipality also may make application to the Secretary of State for an order directing the trustee to release either accrued interest or principal of the trust fund for reimbursement to the county or municipality for the actual costs of cleanup performed by the county or municipality.

HISTORY: Laws, 2009, ch. 549, § 23, eff from and after July 1, 2009; Laws, 2021, ch. 452, § 3, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment added (2).

§ 41-43-59. Cemetery owners authorized to disinter human remains for reinterment or transportation from cemetery under certain circumstances; immunity for claims arising from disinterment and reinterment.

(1) A person or entity that owns a cemetery in which dead human remains are buried or otherwise interred is authorized to disinter individual remains and either reinter the remains at another location within the cemetery or deliver the remains to a carrier for transportation out of the cemetery, all pursuant to written instructions signed and acknowledged by the next of kin of the deceased person as defined in subsection (2) of this section. The costs of the disinterment and reinterment or delivery shall be paid by the next of kin.

(2) For purposes of this section, the term "next of kin" means the following persons in the priority listed if the person is eighteen (18) years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

(a) The decedent's spouse, if the spouse has not remarried.

(b) The decedent's children.

(c) The decedent's parents.

(d) The decedent's siblings.

(3) If the person or entity that owns the cemetery has received contrary written instructions from members of the same class with the highest priority under subsection (2) of this section regarding the disinterment and reinterment of the individual remains at another location within the cemetery or delivery of the individual remains for transportation out of the cemetery, the person or entity that owns the cemetery shall act in accordance with the written instructions received from the greatest number of members of the class. If that number is equal, the person or entity that owns the cemetery shall act in accordance with the earlier written instructions unless the person(s) providing the later written instructions is granted an order from the chancery court for the county in which the cemetery is located.

(4) A person or entity that owns a cemetery in which dead human remains are buried or otherwise interred is authorized to disinter individual remains and either reinter the remains at another location within the cemetery or deliver the remains to a carrier for transportation out of the cemetery, all

pursuant to a final order issued by the chancery court for the county in which the cemetery is located. The court may issue the order, in the court's discretion and upon such notice and hearing as the court deems appropriate, for good cause shown. The costs of the disinterment and reinterment or delivery, and the related court proceedings, shall be paid by the persons or entities so ordered by the court.

(5) A person or entity that owns a cemetery in which dead human remains are buried or otherwise interred is authorized, at the cemetery owner's expense, to disinter individual remains and reinter the remains at another location within the cemetery in order to correct an error made in the original burial or interment of the remains. The cemetery owner shall provide written notice of the disinterment and reinterment to the last known address of the known next of kin of the deceased person as defined in subsection (2) of this section, in the priority listed, by certified mail not later than the fifth day after the date the remains are disinterred and reinterred. The notice shall indicate that the remains were disinterred, the reason for the disinterment and reinterment of the remains, and the location of the reinterred remains.

(6) A person or entity that owns a cemetery or funeral establishment, and its employees, officers and directors, shall not be liable to any person or entity for any claims, causes of action, or damages arising out of or resulting from the original interment and the disinterment and reinterment or delivery of dead human remains made in accordance with this section, except in cases of intentional misconduct or malice.

HISTORY: Laws, 2021, ch. 335, § 1, eff from and after July 1, 2021.

CHAPTER 51.

ANIMAL AND POULTRY BY-PRODUCTS DISPOSAL OR RENDERING PLANTS

§ 41-51-1. Short title.

OPINIONS OF THE ATTORNEY GENERAL

A plant which obtains chicken litter of live chickens from poultry growers to convert the litter into commercial feed for cattle is not a "disposal plant" nor a "rendering plant" as defined in Section 41-51-5. Therefore, such a plant would not be subject to the provisions of Section 41-51-19 nor to any other provisions of the animal and poultry by-products disposal law of 1964, as set out in Section 41-51-1. Spell, May 3, 1996, A.G. Op. #96-0284.

§ 41-51-5. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

A plant which obtains chicken litter of live chickens from poultry growers to convert the litter into commercial feed for cattle is not a "disposal plant" nor a "ren-

dering plant" as defined in Section 41-51-5. Therefore, such a plant would not be subject to the provisions of Section 41-51-19 nor to any other provisions of the animal and poultry by-products disposal law of 1964, as set out in Section 41-51-1. Spell, May 3, 1996, A.G. Op. #96-0284.

§ 41-51-19. Location of plants.

OPINIONS OF THE ATTORNEY GENERAL

A plant which obtains chicken litter of live chickens from poultry growers to convert the litter into commercial feed for cattle is not a "disposal plant" nor a "rendering plant" as defined in Section 41-51-5. Therefore, such a plant would not be subject to the provisions of Section 41-51-19 nor to any other provisions of the animal and poultry by-products disposal law of 1964, as set out in Section 41-51-1. Spell, May 3, 1996, A.G. Op. #96-0284.

CHAPTER 53.

RABIES CONTROL IN DOGS AND CATS

§ 41-53-11. Dogs running at large.

OPINIONS OF THE ATTORNEY GENERAL

An officer must keep all dogs described in Section 41-53-11 for five days and notify the sheriff before killing the dogs. If a dog was obviously rabid and a clear and present danger to the public safety, the five day waiting period would not apply. Stone, April 19, 1996, A.G. Op. #96-0239.

Section 41-53-11(2) does not contain the liability protection that is found in subsection (1). Therefore, an officer that destroys a dog under subsection (2), without waiting the five day period, may subject himself to liability for such action. Stone, April 19, 1996, A.G. Op. #96-0239.

Section 19-3-40 allows a county to contract with a humane society to maintain an animal shelter. Any contract providing for these services would be in addition to, and would not supplant, the sheriff's duties as provided in this section. Spragin, Jan. 21, 2004, A.G. Op. 03-0701.

A sheriff could appoint the county animal control officer to be a deputy for the purpose of handling any situation regarding a rabid or vicious animal. However, that if such officer is declared a deputy sheriff, she would be an agent of the sheriff and the sheriff would be responsible for her actions. Jewell, Aug. 20, 2004, A.G. Op. 04-0290.

§ 41-53-13. Penalties.

OPINIONS OF THE ATTORNEY GENERAL

Any animal control officer who is a peace officer or a deputy sheriff has the authority and duty to enforce the provisions of Title 41, Chapter 53 of the Mississippi Code; such chapter may be enforced by county tickets or affidavits filed in the proper court. Eger, Nov. 9, 2001, A.G. Op. #01-0680.

CHAPTER 55.

PUBLIC AMBULANCE SERVICE

PUBLIC AMBULANCE SERVICES BY GOVERNMENTAL ENTITIES

§ 41-55-1. Maintenance and operation of public ambulance service by political entities.

OPINIONS OF THE ATTORNEY GENERAL

Statute authorizes city to charge user fee to individuals who actually use ambulance service but does not authorize city to charge availability fee; general fee charged to all homeowners and businesses regardless of whether or not they use service would in actuality be tax for support of ambulance service. Hancock, Oct. 4, 1990, A.G. Op. #90-0729.

County may contract with Regional Medical Center for ambulance service. Walters, Sept. 2, 1992, A.G. Op. #92-0648.

It is within the power of a city to enter into a contract with a local hospital to provide ambulance services and to set a reasonable rate for those services. Thomas, Nov. 19, 1999, A.G. Op. #99-0626.

§ 41-55-7. Effect of existence of adequate private ambulance service; public subsidies.

OPINIONS OF THE ATTORNEY GENERAL

A county may contract with a privately run out-of-county ambulance service if the board of supervisors finds, consistent with fact, that such ambulance service is adequate and if the subsidy is necessary to keep such services in operation. Lee, May 15, 1992, A.G. Op. #92-0370.

Section 41-55-7 authorizes a municipality to appropriate a specific sum which is included in the municipal budget to a privately run ambulance service, the statute does not authorize a municipality to execute a continuing guaranty to a governmental entity or other lender to secure funds loaned to a privately run ambulance service. Elliott, May 18, 1995, A.G. Op. #95-0311.

§ 41-55-9. Maintenance and operation of ambulance service by certain hospitals.

OPINIONS OF THE ATTORNEY GENERAL

Board of trustees of community hospital may increase its fees for public ambulance service which is part of hospital and is not required to obtain approval or consent of governing authorities of municipality in county which hospital serves. Nichols, Sept. 10, 1992, A.G. Op. #92-0658.

Board of trustees of community hospital has authority to maintain ambulance service as a part of community hospital and to fix rates for this service; municipal ordinance which provides that rates for ambulance services of community hospital set by board of trustees must be approved

by governing authorities of city is inconsistent with statute. Hayslett, Oct. 14, 1992, A.G. Op. #92-0789.

CHAPTER 57.

VITAL STATISTICS

BUREAU ESTABLISHED

§ 41-57-2. Certain persons not entitled to access to records.

OPINIONS OF THE ATTORNEY GENERAL

Information provided pursuant to § 41-57-13(2) to the circuit clerk, tax assessor, and election commission of each county would not be exempt from the Public Records Act. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

BIRTHS AND DEATHS

§ 41-57-13. Corrections and amendments to death certificates; lists of deaths to be furnished to county registrar and county election commissioners.

OPINIONS OF THE ATTORNEY GENERAL

Information provided pursuant to subsection (2) of this section to the circuit clerk, tax assessor, and election commission of each county would not be exempt from the Public Records Act. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

§ 41-57-23. Proceedings to correct birth certificate containing major deficiencies.

OPINIONS OF THE ATTORNEY GENERAL

An acknowledgment of paternity in the manner prescribed prior to July 1, 1994, was sufficient to impose liability upon the natural father. Taylor, January 9, 1998, A.G. Op. #97-0813.

Where the chancery court is contemplating issuing an order directing the Department of Health to change a birth certificate in fact situations covered by Section 41-57-23, the chancery court should require that the Department of Health be made a party to the lawsuit; nevertheless, in cases where a chancery court has ordered the Department of Health to make a correction to a birth certificate without having first made the department a party, the department should proceed based on that court order. Thompson, Jr., Oct. 26, 2000, A.G. Op. #2000-0507.

MARRIAGES

§ 41-57-48. Statistical record of marriage; completion; filing; recording fee.

OPINIONS OF THE ATTORNEY GENERAL

A statistical record of marriage should be prepared for each license issued by the circuit clerks of the state of Mississippi, regardless of whether the ceremony of marriage is performed in the state of Mississippi, and the statistical record should be filed with the Mississippi State Department of Health. Garner, Apr. 5, 2002, A.G. Op. #02-0141.

CHAPTER 58.

MEDICAL RADIATION TECHNOLOGY

Sec.

§ 41-58-3. Adoption, etc., of rules and regulations; requirements for operation of medical radiation technology machines; maintenance of records by facilities; continuing education requirements for operators; registration requirements [Repealed effective July 1, 2023].

(1) The department shall have full authority to adopt such rules and regulations not inconsistent with the laws of this state as may be necessary to effectuate the provisions of this chapter, and may amend or repeal the same as may be necessary for such purposes.

(2) There shall be established a Medical Radiation Advisory Council to be appointed as provided in this section. The council shall consist of ten (10) members as follows:

(a) One (1) radiologist who is an active practitioner and member of the Mississippi Radiological Society;

(b) One (1) licensed family physician;

(c) One (1) licensed practitioner;

(d) Two (2) registered radiologic technologists;

(e) One (1) nuclear medicine technologist;

(f) One (1) radiation therapist;

(g) One (1) radiation physicist;

(h) One (1) hospital administrator; and

(i) The State Health Officer, or his designee, who shall serve as ex officio chairman with no voting authority.

(3) The department shall, following the recommendations from the appropriate professional state societies and organizations, including the Mississippi Radiological Society, the Mississippi Society of Radiologic Technologists, and the Mississippi State Nuclear Medicine Society, and other nominations that may be received from whatever source, appoint the members of the council as soon as possible after April 13, 1996. Any person serving on the council who is a practitioner of a profession or occupation required to be licensed, credentialed or certified in the state shall be a holder of an appropriate license, credential or certificate issued by the state. All members of the council shall be residents of the State of Mississippi. The council shall promulgate such rules and regulations by which it shall conduct its business. Members of the council shall receive no salary for services performed on the council but may be reimbursed for their reasonable and necessary actual expenses incurred in the performance of the same, from funds provided for such purpose. The council shall assist and advise the department in the development of regulations and standards to effectuate the provisions of this chapter.

(4) A radiologic technologist, nuclear medicine technologist or radiation therapist shall not apply ionizing or x-radiation or administer radiopharmaceuticals to a human being or otherwise engage in the practice of medical radiation technology unless the person possesses a valid registration issued by the department under the provisions of this chapter.

(5) The department may issue a temporary registration to practice a specialty of medical radiation technology to any applicant who has completed an approved program, who has complied with the provisions of this chapter, and is awaiting examination for that specialty. This registration shall convey the same rights as the registration for which the applicant is awaiting examination and shall be valid for one (1) six-month period.

(6) The department may charge a registration fee of not more than Fifty Dollars ($50.00) biennially to each person to whom it issues a registration under the provisions of this chapter. Any increase in the fee charged by the department under this subsection shall be in accordance with the provisions of Section 41-3-65.

(7) Registration with the department is not required for:

(a) A student enrolled in and participating in an accredited course of study approved by the department for diagnostic radiologic technology, nuclear medicine technology or radiation therapy, who as a part of his clinical course of study applies ionizing radiation to a human being while under the supervision of a licensed practitioner, registered radiologic technologist, registered nuclear medicine technologist or registered radiation therapist;

(b) Laboratory personnel who use radiopharmaceuticals for in vitro studies;

(c) A dental hygienist or a dental assistant who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who possesses a radiology permit issued by the Board of Dental Examiners and applies ionizing radiation under the specific direction of a licensed dentist;

(d) A chiropractic assistant who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who possesses a radiology permit issued by the Board of Chiropractic Examiners and applies ionizing radiation under the specific direction of a licensed chiropractor;

(e) An individual who is permitted as a limited x-ray machine operator by the State Board of Medical Licensure and applies ionizing radiation in a physician's office, radiology clinic or a licensed hospital in Mississippi under the specific direction of a licensed practitioner; and

(f) A student enrolled in and participating in an accredited course of study for diagnostic radiologic technology, nuclear medicine technology or radiation therapy and is employed by a physician's office, radiology clinic or a licensed hospital in Mississippi and applies ionizing radiation under the specific direction of a licensed practitioner.

(8) Nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practices of a licensed practitioner who is duly licensed or registered by the appropriate agency of the State of Mississippi, provided that the agency specifically recognizes that the procedures covered by this chapter are within the scope of practice of the licensee or registrant.

(9)(a) If any radiologic technologist, nuclear medicine technologist or radiation therapist violates any provision of this chapter or the regulations adopted by the department, the department shall suspend or revoke the registration and practice privileges of the person or issue other disciplinary actions in accordance with statutory procedures and rules and regulations of the department.

(b) If any person violates any provision of this chapter, the department shall issue a written warning to the licensed practitioner or medical institution that employs the person; and if that person violates any provision of this chapter again within three (3) years after the first violation, the department may suspend or revoke the permit or registration for the x-radiation and ionizing equipment of the licensed practitioner or medical institution that employs the person, in accordance with statutory procedures and rules and regulations of the department regarding suspension and revocation of those permits or registrations.

(10) This section shall stand repealed on July 1, 2023.

HISTORY: Laws, 1995, ch. 388, § 2; Laws, 1996, ch. 546, § 2; Laws, 2000, ch. 333, § 2; Laws, 2006, ch. 324, § 2; Laws, 2010, ch. 478, § 2; Laws, 2013, ch. 434, § 2; Laws, 2015, ch. 317, § 2; Laws, 2015, ch. 459, § 2; Laws, 2016, ch. 510, § 8, eff from and after July 1, 2016; Laws, 2018, ch. 321, § 2, eff from and after July 1, 2018; reenacted and amended, Laws, 2020, ch. 473, § 8, eff from and after July 1, 2020.

Editor's Notes — This section was subject to the repealer in Section 65 of Chapter 510, Laws of 2016, effective July 1, 2020, and is also repealed by its own terms, effective July 1, 2023. Section 65, Chapter 510, Laws of 2016, was subsequently repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020. This section remains subject to the repealer in subsection (10) of the section, effective July 1, 2023.

Amendment Notes — The 2020 amendment reenacted and amended the section by, in the introductory paragraph of (2), substituting "ten (10)" for "nine (9)" and in (3),

substituting "April 13, 1996" for "the effective date of subsection (2) of this section and this subsection (3)."

CHAPTER 59.

EMERGENCY MEDICAL SERVICES

GENERAL PROVISIONS

§ 41-59-3. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

Medical information contained in "run reports" from City EMS units which contain name of person treated, address of response, physical data, summary of any medical treatment or other action taken in response to run and other pertinent information, is confidential other information in reports is public. Lawrence Oct. 6, 1993, A.G. Op. #93-0592.

It is within the discretion of the Department of Health to determine the type of organizational structure that will best meet the intent of the legislature to "reduce death and disability resulting from traumatic injury" through the establishment of a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. Thompson, May 21, 1999, A.G. Op. #99-0195.

§ 41-59-5. Establishment and administration of program.

OPINIONS OF THE ATTORNEY GENERAL

It is within the discretion of the Department of Health to determine the type of organizational structure that will best meet the intent of the legislature to "reduce death and disability resulting from traumatic injury" through the establishment of a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. Thompson, May 21, 1999, A.G. Op. #99-0195.

§ 41-59-7. Advisory council.

OPINIONS OF THE ATTORNEY GENERAL

A physician on staff at the Elvis Presley Memorial Trauma Center in Memphis may be appointed by the governor as an EMS Advisory Council representative of the trauma region encompassing that hospital when that physician lives and practices in Tennessee. Whitfield, July 23, 2004, A.G. Op. 04-0350.

§ 41-59-11. Application for license.

HISTORY: Laws, 1974, ch. 507, § 5(2); Laws, 1979, ch. 445, § 1; Laws, 1982, ch. 345, § 1; Laws, 1991, ch. 606, § 3; Laws, 2016, ch. 510, § 9, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 9, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 9. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-59-17. Suspension or revocation of license; renewal.

HISTORY: Laws, 1974, ch. 507, § 5(5, 6); Laws, 1979, ch. 445, § 2; Laws, 1982, ch. 345, § 2; Laws, 1991, ch. 606, § 4; Laws, 2016, ch. 510, § 10, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 10, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 10. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-59-23. Ambulance permit.

HISTORY: Laws, 1974, ch. 507, § 6; Laws, 1979, ch. 445, § 3; Laws, 1982, ch. 345, § 3; Laws, 1991, ch. 606, § 5; Laws, 2016, ch. 510, § 11, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 11, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 11. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-59-33. Emergency medical technicians; certification.

Laws, 1974, ch. 507, § 8(3); Laws, 1979, ch. 445, § 4; Laws, 1982, ch. 345, § 4; Laws, 1991, ch. 606, § 6; Laws, 2016, ch. 510, § 12; Laws, 2017, ch. 371, § 5, eff from and after July 1, 2017; reenacted without change, Laws, 2020, ch. 473, § 12, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 12. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-59-35. Emergency medical technicians; period of certification; renewal, suspension or revocation of certificate; use of certain EMT titles without certification prohibited; transportation of police dog injured in line of duty to veterinary clinic authorized; penalty for violation.

HISTORY: Laws, 1974, ch. 507, § 8(4, 5); Laws, 1979, ch. 445, § 5; Laws, 1982, ch. 345, § 5; Laws, 1991, ch. 606, § 7; Laws, 2001, ch. 542, § 1; Laws, 2013, ch. 311, § 2; Laws, 2016, ch. 510, § 13; Laws, 2017, ch. 371, § 6, eff from and after July 1, 2017; Laws, 2018, ch. 319, § 1, eff from and after July 1, 2018; Laws, 2018, ch. 392, § 1, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 473, § 13, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 13. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-59-51. Districts; authority to establish.

OPINIONS OF THE ATTORNEY GENERAL

Under Sections 19-5-151 and 41-59-51, Fire Protection and EMS Districts are two separate and distinct entities and may not be created as one entity. Hatten, August 14, 1995, A.G. Op. #95-0529.

§ 41-59-61. Emergency medical services operating fund; assessment on traffic violations.

OPINIONS OF THE ATTORNEY GENERAL

Where a county provides a subsidy to a private ambulance service and the subsidy is then returned to the county, such arrangement will not be viewed as an existing emergency medical services budget as required by the statute. Thompson, July 10, 1998, A.G. Op. #98-0157.

A reasonable reading of the statute would not appear to intend the disbursement of Emergency Medical Services Operating Funds to groups or activities not within the jurisdiction of the Mississippi State Department of Health and its Emergency Medical Services program, although a decision on this question is within the discretion of the Mississippi State Board of Health with the EMS Advisory Council acting in its advisory capacity. Thompson, July 10, 1998, A.G. Op. #98-0157.

§ 41-59-65. Application for permit to conduct membership subscription program; fees; renewals.

HISTORY: Laws, 1988, ch. 541, § 2; reenacted, Laws, 1991, ch. 348, § 2; reenacted, Laws, 1992, ch. 327, § 2; Laws, 2016, ch. 510, § 14, eff from and after July 1, 2016; reenacted without change, Laws 2020, ch. 473, § 14, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 14. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-59-75. Mississippi Trauma Care Systems Fund established; Mississippi Trauma Care Escrow Fund created.

OPINIONS OF THE ATTORNEY GENERAL

It is within the discretion of the Department of Health to determine the type of organizational structure that will best meet the intent of the legislature to "reduce death and disability resulting from traumatic injury" through the establishment of a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. Thompson, May 21, 1999, A.G. Op. #99-0195.

§ 41-59-77. Trauma registry data confidential and not subject to discovery or introduction into evidence in civil actions.

OPINIONS OF THE ATTORNEY GENERAL

Statutes pertaining to the confidentiality and discoverability of reviews conducted under the statewide trauma system discussed. Thompson, May 2, 2003, A.G. Op. 02-0645.

Statutes pertaining to the confidentiality and discoverability of reviews conducted under the statewide trauma system discussed. Thompson, May 2, 2003, A.G. Op. #02-0645.

§ 41-59-79. Certification of first responders by State Board of Health.

HISTORY: Laws, 2002, ch. 623, § 3; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 3; Laws, 2004, ch. 581, § 2; Laws, 2016, ch. 510, § 15, eff from and after July 1, 2016; reenacted without change, Laws 2020, ch. 473, § 15, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 15. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and

which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

CHAPTER 60.

EMERGENCY MEDICAL TECHNICIANS — PARAMEDICS — USE OF AUTOMATED EXTERNAL DEFIBRILLATOR

IN GENERAL

§ 41-60-11. Definitions.

As used in Sections 41-59-29 through 41-59-37 and Sections 41-60-11 and 41-60-13, unless the context otherwise requires, the term:

(a) "Advanced life support" means a sophisticated level of prehospital and interhospital emergency care which includes basic life-support functions including cardiopulmonary resuscitation (CPR), plus cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care and other authorized techniques and procedures.

(b) "Advanced life-support personnel" means persons other than physicians engaged in the provision of advanced life support, as defined and regulated by rules and regulations promulgated by the board.

(c) "Emergency medical technician-advanced" means a person specially trained in an advanced life-support training program authorized by the Mississippi State Board of Health.

(d) "Emergency medical technician-paramedic" means a person specially trained in an advanced life-support training program authorized by the Mississippi State Board of Health.

(e) "Emergency medical technician-paramedic critical care" means a person who (i) is licensed as a Mississippi Emergency Medical Technician Paramedic, and (ii) has successfully completed a critical care paramedic program recognized by the Bureau of Emergency Medical Services and the Mississippi State Department of Health.

(f) "Medical control" means directions and advice provided from a centrally designated medical facility staffed by appropriate personnel, operating under medical supervision, supplying professional support through radio or telephonic communication for on-site and in-transit basic and advanced life-support services given by field and satellite facility personnel.

HISTORY: Laws, 1979, ch. 488, § 1; Laws, 2001, ch. 542, § 3; Laws, 2013, ch. 311, § 1, eff from and after July 1, 2013; Laws, 2018, ch. 392, § 3, eff from and after July 1, 2018; Laws, 2019, ch. 370, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote (c), which read: "'Emergency medical technician-advanced' means a person specially trained in advanced life-support modules, numbers I, II and III as developed for the United States Department of Transportation under Contract No. DOT-HS-900-089, as authorized by the Mississippi State Board of Health."

§ 41-60-13. Promulgation of rules and regulations by State Board of Health.

OPINIONS OF THE ATTORNEY GENERAL

This statute grants sole authority to the State Department of Health in promulgating rules and regulations regarding all performance requirements of the training programs for advanced life support trainees and personnel. Delahousey, Dec. 12, 2003, A.G. Op. 03-0654.

CHAPTER 61.

STATE MEDICAL EXAMINER

MISSISSIPPI MEDICAL EXAMINER ACT OF 1986

§ 41-61-53. Definitions.

For the purposes of Sections 41-61-51 through 41-61-79, the following definitions shall apply:

(a) "Certification of death" means signing the death certificate.

(b) "Coroner" means the elected county official provided for in Sections 19-21-101 through 19-21-107.

(c) "County medical examiner investigator" means a nonphysician

coroner or deputy coroner trained to investigate and certify deaths affecting the public interest.

(d) "County medical examiner" means a licensed physician who is a coroner or deputy coroner trained to investigate and certify deaths affecting the public interest.

(e) "Death affecting the public interest" means any death of a human being where the circumstances are sudden, unexpected, violent, suspicious or unattended.

(f) "Medical examiner" means the medical examiner system which is composed of the State Medical Examiner, county medical examiners and county medical examiner investigators collectively, and is a jurisdictional identifier, not a title, unless the context clearly requires otherwise.

(g) "Medical examiner investigator" means a nonphysician appointed, trained and supervised by the State Medical Examiner to investigate and assist with the certification of deaths affecting the public interest.

(h) "Pronouncement of death" means the statement of opinion that life has ceased for an individual.

(I) "State Medical Examiner" means the person appointed by the Commissioner of Public Safety pursuant to Section 41-61-55 to investigate and certify deaths that affect the public interest.

(j) "Autopsy" means a postmortem examination.

(k) "Postmortem examination" means an examination of a dead human body that may include the least invasive to most invasive methods based on the expertise and judgment of the pathologist handling the case.

HISTORY: Laws, 1986, ch. 459, § 7; Laws, 2011, ch. 499, § 2, eff from and after July 1, 2011; Laws, 2019, ch. 310, § 1, eff from and after passage (approved March 14, 2019); Laws, 2021, ch. 403, § 8, eff from and after July 1, 2021.

Amendment Notes — The 2019 amendment, effective March 14, 2019, rewrote (f), which read: "'Medical examiner' means the State Medical Examiner, county medical examiners and county medical examiner investigators collectively, unless otherwise specified"; substituted "person" for "board certified forensic pathologist/physician" in (h); and added (i) and (j).

The 2021 amendment, in (c), substituted "nonphysician coroner or deputy coroner trained to investigate" for "nonphysician trained and appointed to investigate"; in (d), substituted "physician who is a coroner or deputy coroner trained to investigate" for "physician appointed to investigate"; added (g); and redesignated former (g) through (j) as (h) through (k).

§ 41-61-55. State Medical Examiner; appointment; discharge; qualifications; State Medical Examiner Advisory Council; composition and purpose.

(1) There is hereby created the position of State Medical Examiner, under the supervision of the Commissioner of Public Safety and within the Office of Forensic Laboratories. The State Medical Examiner shall be appointed by the Commissioner of Public Safety subject to review by the dean of the University of Mississippi Medical Center School of Medicine and the State Health Officer.

The State Medical Examiner may be discharged only for good cause by the Commissioner of Public Safety.

(2) The State Medical Examiner must obtain a license to practice medicine in Mississippi and be certified in forensic pathology by the American Board of Pathology. The State Medical Examiner may also be designated as the Chief Medical Examiner.

(3) There is hereby created the State Medical Examiner Advisory Council composed of the State Health Officer or his or her designee, the Dean of the University of Mississippi Medical Center School of Medicine or his or her designee, the Commissioner of Public Safety, the Attorney General or his or her designee, the President of the Mississippi Coroner and Medical Examiners Association or his or her designee, the President of the Mississippi Prosecutors Association or his or her designee, the President of the Mississippi Public Defenders Association or his or her designee, the President of the Mississippi Association of Chiefs of Police or his or her designee, and the President of the Mississippi Sheriffs' Association or his or her designee. The council shall be purely advisory and serve as a liaison between the State Medical Examiner and the various entities related to the Medical Examiner Act.

HISTORY: Laws, 1986, ch. 459, § 8; Laws, 2011, ch. 499, § 1, eff from and after July 1, 2011; Laws, 2019, ch. 310, § 2, eff from and after passage (approved March 14, 2019); Laws, 2019, ch. 312, § 2, eff from and after July 1, 2019; Laws, 2021, ch. 403, § 9, eff from and after July 1, 2021.

Joint Legislative Committee Note — Section 2 of Chapter 310, Laws of 2019, effective upon passage (approved March 14, 2019), amended this section. Section 2 of Chapter 312, Laws of 2019, effective July 1, 2019 (approved March 15, 2019), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 12, 2019, meeting of the Committee. Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence of subsection (1) by substituting "Office of Forensics Laboratories" for "Office of Forensic Laboratory." The Joint Committee ratified the corrections at its August 12, 2019, meeting.

Amendment Notes — The first 2019 amendment (ch. 310), effective March 14, 2019, deleted "to be established as herein provided" following "State Medical Examiner" in the first sentence of (1); in (2), rewrote the first sentence, which read: "Each applicant for the position of State Medical Examiner shall, as a minimum, be a physician who is eligible for a license to practice medicine in Mississippi and be certified in forensic pathology by the American Board of Pathology," and added the last sentence; and substituted "Mississippi Coroner and Medical Examiners Association" for "Mississippi Coroners'' Association" in (3).

The second 2019 amendment (ch. 312) added "and within the Office of Forensics Laboratory" at the end of the first sentence of (1); and substituted "Mississippi Coroner and Medical Examiners Association" for "Mississippi Coroners' Association" in the first sentence of (3).

The 2021 amendment, in (1), rewrote the second and third sentences, which read: "The State Medical Examiner shall be appointed by the Commissioner of Public Safety

subject to the approval of a majority of a panel composed of the following: (a) the Dean of the University of Mississippi Medical Center School of Medicine; (b) the Dean of the University of Mississippi School of Law; and (c) the State Health Officer. The State Medical Examiner may be discharged only for good cause, upon the recommendation of the Commissioner of Public Safety, and by a majority of the same panel."

§ 41-61-57. County medical examiner; county medical examiner investigator; qualifications; appointment of coroner pro tempore; deputy; removal.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory authority for county to employ secretary for county medical examiner. Meadows, Dec. 16, 1992, A.G. Op. #92-0862.

A county board of supervisors cannot unilaterally appoint a deputy county medical examiner investigator after the county medical examiner investigator has been disqualified by the Office of State Medical Examiner; however, as government must continue to operate, until such time as the office of deputy county medical examiner investigator is properly filled, the board of supervisors may appoint an acting deputy or deputies. Barry, Apr. 5, 2002, A.G. Op. #02-0162.

The board of supervisors in a county with a population of more than 78,000 could appoint more than one deputy county medical examiner investigator. Barry, Apr. 5, 2002, A.G. Op. #02-0162.

§ 41-61-59. Report of death to medical examiner; investigation of death; compensation of chief medical examiner or investigator.

(1) A person's death that affects the public interest as specified in subsection (2) of this section shall be promptly reported to the medical examiner by the physician in attendance, any hospital employee, any law enforcement officer having knowledge of the death, the embalmer or other funeral home employee, any emergency medical technician, any relative or any other person present. The appropriate medical examiner shall notify the municipal or state law enforcement agency or sheriff and take charge of the body. When the medical examiner has received notification under Section 41-39-15(6) that the deceased is medically suitable to be an organ and/or tissue donor, the medical examiner's authority over the body shall be subject to the provisions of Section 41-39-15(6). The appropriate medical examiner shall notify the Mississippi Bureau of Narcotics within twenty-four (24) hours of receipt of the body in cases of death as described in subsection (2)(m) or (n) of this section.

(2) A death affecting the public interest includes, but is not limited to, any of the following:

(a) Violent death, including homicidal, suicidal or accidental death.

(b) Death caused by thermal, chemical, electrical or radiation injury.

(c) Death caused by criminal abortion, including self-induced abortion, or abortion related to or by sexual abuse.

(d) Death related to disease thought to be virulent or contagious that may constitute a public hazard.

(e) Death that has occurred unexpectedly or from an unexplained cause.

(f) Death of a person confined in a prison, jail or correctional institution.

(g) Death of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or in prediagnosed terminal or bedfast cases, within thirty (30) days preceding death.

(h) Death of a person where the body is not claimed by a relative or a friend.

(i) Death of a person where the identity of the deceased is unknown.

(j) Death of a child under the age of two (2) years where death results from an unknown cause or where the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death.

(k) Where a body is brought into this state for disposal and there is reason to believe either that the death was not investigated properly or that there is not an adequate certificate of death.

(*l*) Where a person is presented to a hospital emergency room unconscious and/or unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital.

(m) Death that is caused by drug overdose or which is believed to be caused by drug overdose.

(n) When a stillborn fetus is delivered and the cause of the demise is medically believed to be from the use by the mother of any controlled substance as defined in Section 41-29-105.

(3) The State Medical Examiner is empowered to investigate deaths, under the authority hereinafter conferred, in any and all political subdivisions of the state. The county medical examiners and county medical examiner investigators, while appointed for a specific county, may serve other counties on a regular basis with written authorization by the State Medical Examiner, or may serve other counties on an as-needed basis upon the request of the ranking officer of the investigating law enforcement agency. If a death affecting the public interest takes place in a county other than the one where injuries or other substantial causal factors leading to the death have occurred, jurisdiction for investigation of the death may be transferred, by mutual agreement of the respective medical examiners of the counties involved, to the county where the injuries or other substantial causal factors occurred, and the costs of autopsy or other studies necessary to the further investigation of the death shall be borne by the county assuming jurisdiction.

(4) The chief county medical examiner or chief county medical examiner investigator may receive from the county in which he serves a salary of One Thousand Two Hundred Fifty Dollars ($1,250.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75, provided that no county shall pay the chief county medical examiner or chief county medical examiner

investigator less than Three Hundred Dollars ($300.00) per month as a salary, in addition to other compensation provided by law. In any county having one or more deputy medical examiners or deputy medical examiner investigators, each deputy may receive from the county in which he serves, in the discretion of the board of supervisors, a salary of not more than Nine Hundred Dollars ($900.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75; however, no county shall pay the deputy medical examiners or deputy medical examiner investigators less than Three Hundred Dollars ($300.00) per month as a salary in addition to other compensation provided by law. For this salary the chief shall assure twenty-four-hour daily and readily available death investigators for the county, and shall maintain copies of all medical examiner death investigations for the county for at least the previous five (5) years. He shall coordinate his office and duties and cooperate with the State Medical Examiner, and the State Medical Examiner shall cooperate with him.

HISTORY: Laws, 1986, ch. 459, § 10; Laws, 1987, ch. 504; Laws, 1989, ch. 455, § 2; Laws, 1990, ch. 453, § 2; Laws, 1991, ch. 591, § 1; Laws, 1993, ch. 411, § 1; Laws, 1998, ch. 567, § 1; Laws, 2003, ch. 548, § 1; Laws, 2004, ch. 505, § 5; Laws, 2005, ch. 472, § 3; Laws, 2010, ch. 436, § 2; Laws, 2011, ch. 499, § 3, eff from and after July 1, 2011; Laws, 2019, ch. 485, § 9, eff from and after January 1, 2020.

Editor's Notes — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act [approved April 18, 2019]."

Amendment Notes — The 2019 amendment, effective January 1, 2020, in (4), substituted "One Thousand Two Hundred Fifty Dollars ($1,250.00)" for "Nine Hundred Dollars ($900.00)" and "Three Hundred Dollars ($300.00)" for "One Hundred Dollars ($100.00)" in the first sentence, and added "however, no county shall pay...provided by law" at the end of the second sentence.

OPINIONS OF THE ATTORNEY GENERAL

A crime scene never falls under the jurisdiction of the county medical examiner. However, the county medical examiner does have authority over a body at a crime scene where the death affects the public interest, pursuant to Section 41-61-59(1). See also, Section 41-61-61(1). Houston, February 16, 1995, A.G. Op. #95-0090.

Under Section 41-61-61(1), the medical examiner of the county must be contacted promptly and with limited exception has exclusive jurisdiction over the body while it is at the crime scene, up and until the body is released to a law enforcement agency as directed by Section 41-61-59(1). Houston, February 16, 1995, A.G. Op. #95-0090.

Based upon Section 41-61-59(3), jurisdiction to investigate a death is transferred from one county to another county only if there is a mutual agreement between the county medical examiners involved. If the medical examiners cannot reach an agreement to transfer jurisdiction, then the county where the death occurred retains jurisdiction to investigate the death. Gurley, December 20, 1996, A.G. Op. #96-0858.

Jurisdiction to investigate a death is transferred from one county to another only if there is a mutual agreement be-

tween the county medical examiners involved and, if they cannot reach an agreement, the county where the death occurred retains jurisdiction to investigate the death; thus, an examiner may store a dead body in a hospital morgue in another county and still retain jurisdiction over the body, but the examiner for the county where the dead body is stored may not obtain jurisdiction over the body merely because the body is being stored at a morgue in his county. Oliver, January 30, 1998, A.G. Op. #98-0034.

The statute requires a sheriff or any law enforcement officer having knowledge of a death that affects the public interest to notify the county medical examiner/coroner so that the coroner may take charge of the body. Peeler, Jan. 28, 2000, A.G. Op. #2000-0002.

If a patient in a nursing home dies under any of the circumstances listed in this section or under similarly related circumstances, the county medical examiner must be notified. Gowan, Oct. 11, 2002, A.G. Op. #02-0577.

If a patient in a nursing home dies under any of the circumstances listed in this section or under similarly related circumstances, the county medical examiner must be notified and, pursuant to § 41-61-63(2)(a), a medical examiner has the authority to inspect and copy the medical records of a decedent whose death is under investigation. Hedgepeth, Oct. 11, 2002, A.G. Op. #02-0579.

No authority is found that prohibits a funeral home director from notifying anyone else about a suspicious death so long as the medical examiner is promptly notified. Thomason, Oct. 29, 2004, A.G. Op. 04-0504.

No criminal statute is known that prohibits photographing a deceased body by anyone at a time a when a funeral home removes a body from the place of death and there is a question of suspicion of foul play. Thomason, Oct. 29, 2004, A.G. Op. 04-0504.

§ 41-61-61. County medical examiner to be notified of death; disturbing body at scene of death; notification to State Medical Examiner; penalty for violations; transporting body to autopsy facility.

OPINIONS OF THE ATTORNEY GENERAL

Board of Supervisors merely has option to either contract with individual other than County Medical Examiner Investigator to transport bodies in question or county may make vehicle available to County Medical Examiner Investigator or law enforcement for purpose of transporting bodies; statute does not grant Board of Supervisors authority to enter into contract with County Medical Examiner Investigator. Leeth, March 28, 1990, A.G. Op. #90-0198.

If no law enforcement officer is available, coroners as death investigators may seize and preserve evidence in furtherance of death investigation; coroners should carefully mark and maintain evidence of custody over illegal narcotics so seized until it can be turned over to proper law enforcement officers. Illegal narcotics may not be ordered destroyed by the coroner but should be turned over to proper law enforcement authority. Dukes, Oct. 22, 1992, A.G. Op. #92-0721.

Under Miss. Code Section 41-61-61(4), coroner/county medical examiner investigator has authority to cause to be removed bodies which are to be autopsied, and county is obligated to pay expenses of such removal; however, county may contract with individuals or make available to medical examiner or law enforcement personnel vehicle for transportation of bodies. Jones, Mar. 31, 1993, A.G. Op. #93-0044.

A crime scene never falls under the jurisdiction of the county medical examiner. However, the county medical examiner does have authority over a body at a crime scene where the death affects the

public interest, pursuant to Section 41-61-59(1). Houston, February 16, 1995, A.G. Op. #95-0090.

Under Section 41-61-61(1), the medical examiner of the county must be contacted promptly and with limited exception has exclusive jurisdiction over the body while it is at the crime scene, up and until the body is released to a law enforcement agency as directed by Section 41-61-59(1). Houston, February 16, 1995, A.G. Op. #95-0090.

Section 41-61-61 provides that the county should pay the expenses for the transportation of a body if an autopsy is to be performed. However, the statutes are silent as to transportation of bodies when no autopsy is to be performed. Hemphill, August 30, 1996, A.G. Op. #96-0586.

The discovery of any human bones should promptly be reported to the county medical examiner or the State Medical Examiner. Peeler, Jan. 28, 2000, A.G. Op. #2000-0002.

§ 41-61-63. Duties of State Medical Examiner; completion of death certificate; medical examiner not to favor particular funeral homes.

OPINIONS OF THE ATTORNEY GENERAL

State Department of Health/HIV/AIDS Prevention Program must provide state Medical Examiner's Office with medical information regarding whether or not victims who die and fall under Examiner's jurisdiction for investigation and certification, are HIV carriers or suspected HIV carriers. Dayton, Sept. 10, 1992, A.G. Op. #92-0651.

Under Miss. Code Section 41-61-63(2)(a), medical examiner is authorized to inspect and copy medical reports of decedent whose death is under investigation, with such authority encompassing cases of deaths affecting public interest as defined by Miss. Code Section 41-61-59. Cobb, Jan. 4, 1993, A.G. Op. #92-0838.

"Medical reports" under Miss. Code Section 41-61-63 include any reports or other documents supplied by hospital, doctor, nurse or other health professional, who has had contact with patient, but do not include summations or other reports prepared by Department of Health personnel. Cobb, Jan. 4, 1993, A.G. Op. #92-0838.

Miss. Code Section 41-61-63(2)(a) authorizes medical examiners to request issuance of subpoenas, through proper court, for production of documents as may be required by their investigation; therefore, documents not accessible as "medical reports" could be obtained by medical examiners upon showing to court that such documents were required in investigations. Cobb, Jan. 4, 1993, A.G. Op. #92-0838.

Medical form which includes reportable diseases is not "medical record" within meaning of Miss. Code Section 41-61-63, and is, therefore, not available to medical examiners without subpoena issued by proper court. Thompson, Feb. 25, 1993, A.G. Op. #93-0084.

Medical examiner is authorized to obtain medical records of deceased from treating physician or hospital without necessity of subpoena, but medical examiner investigator may obtain subpoena to compel production of medical records. Mullins, Feb. 24, 1994, A.G. Op. #93-0947.

A county medical examiner only has the responsibility of completing the death certificate after assuming jurisdiction over a death. Peeler, Jan. 28, 2000, A.G. Op. #2000-0002.

§ 41-61-65. Autopsy; reports; immunity from liability; review of determination.

(1) If, in the opinion of the medical examiner investigating the case, it is advisable and in the public interest that an autopsy or other study be made for

the purpose of determining the primary and/or contributing cause of death, an autopsy or other study shall be made by the State Medical Examiner, or the State Medical Examiner may choose a competent pathologist who is designated by the State Medical Examiner or the Department of Public Safety as a pathologist qualified to perform postmortem examinations and autopsies to perform the autopsy or study. To be eligible to be designated under this section, a pathologist must be an M.D. or D.O. who is certified in anatomic pathology by the American Board of Pathology unless a certified anatomic pathologist is not available to perform a postmortem examination or autopsy within a reasonable time. The State Medical Examiner or designated pathologist may retain any tissues as needed for further postmortem studies or documentation. When the medical examiner has received notification under Section 41-39-15(6) that the deceased is medically suitable to be an organ and/or tissue donor, the State Medical Examiner or designated pathologist may retain any biopsy or medically approved sample of the organ and/or tissue in accordance with the provisions of Section 41-39-15(6). A complete autopsy report of findings and interpretations, prepared on forms designated for this purpose, shall be submitted promptly to the State Medical Examiner. Copies of the report shall be furnished to the authorizing medical examiner, district attorney and court clerk. A copy of the report shall be furnished to one (1) adult member of the immediate family of the deceased or the legal representative or legal guardian of members of the immediate family of the deceased upon request. In determining the need for an autopsy, the medical examiner may consider the request from the district attorney or county prosecuting attorney, law enforcement or other public officials or private persons. However, if the death occurred in the manner specified in subsection (2)(j) of Section 41-61-59, an autopsy shall be performed by the State Medical Examiner or a designated pathologist who is qualified as required by this subsection, and the report of findings shall be forwarded promptly to the State Medical Examiner, investigating medical examiner, the State Department of Health, the infant's attending physician and the local sudden infant death syndrome coordinator. In addition to the authority granted under this section, medical examiner investigators, under the supervision of the State Medical Examiner, may assist with the performance or completion of autopsies or other duties of the Office of the State Medical Examiner.

(2) Any medical examiner or duly licensed physician performing authorized investigations and/or autopsies as provided in Sections 41-61-51 through 41-61-79 who, in good faith, complies with the provisions of Sections 41-61-51 through 41-61-79 in the determination of the cause and/or manner of death for the purpose of certification of that death, shall not be liable for damages on account thereof, and shall be immune from any civil liability that might otherwise be incurred or imposed.

(3) Family members or others who disagree with the medical examiner's determination shall be able to petition and present written argument to the State Medical Examiner for further review. If the petitioner still disagrees, he may petition the circuit court, which may, in its discretion, hold a formal

hearing. In all those proceedings, the State Medical Examiner and the county medical examiner or county medical examiner investigator who certified the information shall be made defendants. All costs of the petition and hearing shall be borne by the petitioner.

HISTORY: Laws, 1986, ch. 459, § 13; Laws, 1990, ch. 484, § 1; Laws, 2002, ch. 424, § 2; Laws, 2003, ch. 383, § 2; Laws, 2005, ch. 472, § 4; Laws, 2010, ch. 436, § 1; Laws, 2011, ch. 499, § 6, eff from and after July 1, 2011; Laws, 2021, ch. 403, § 10, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in (1), in the second sentence, substituted "anatomic pathology" for "forensic pathology" and "anatomic pathologist" for "forensic pathologist", and added the last sentence.

OPINIONS OF THE ATTORNEY GENERAL

Only state medical examiner or designated pathologist may perform autopsies for state or county. Miller, Oct. 21, 1992, A.G. Op. #92-0784.

Pursuant to Section 41-61-65(1) the State Medical Examiner has discretion in releasing or transferring any tissues from autopsies that are on file with the State Medical Examiner's Office. Head, May 9, 1996, A.G. Op. #96-0290.

The statute gave the State Medical Examiner the authority to enter into a research project as proposed in a letter. Head, November 25, 1998, A.G. Op. #98-0713.

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental Health, in whose custody the patient died. Hendrix, Apr. 23, 2004, A.G. Op. 04-0161.

§ 41-61-66. Christian's Law; confidentiality of autopsy media records held by medical examiner; exceptions; penalties for violation.

(1) This section shall be referred to and may be cited as "Christian's Law."

(2) For the purposes of this section:

(a) "Surviving relative" means:

(i) The surviving spouse of the deceased;

(ii) If there is no surviving spouse, the surviving parents of the deceased;

(iii) If there is no surviving spouse or parent, the surviving adult children of the deceased; or

(iv) If there is no surviving spouse, parent or adult children, the next of kin of the deceased.

(b) "Autopsy media records" means:

(i) A photograph or video or audio recording of an autopsy; and

(ii) A photograph or video or audio recording of the crime scene taken by or used by the coroner or the medical examiner.

(3) Autopsy media records are confidential subject to the provisions of this section. The custodian of the autopsy medical records, or his or her designee, may not permit any person or entity, unless authorized by this section or court order pursuant to this section, to access autopsy media records. In all cases, the viewing, copying, listening to and/or other handling of autopsy media

records must be under the direct supervision of the custodian of the record or his or her designee.

(4)(a) A surviving relative, or the surviving relative's designee, may view, listen to, and/or copy autopsy media records;

(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view, listen to, copy and/or disclose autopsy media records. Unless otherwise required in the performance of the duties of the local governmental entity, the identity of the deceased shall remain confidential and exempt under this paragraph;

(c) A criminal or administrative proceeding is exempt from this section. This section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner prescribed herein;

(d) A coroner or a medical examiner, and his or her designee, or a medical physician, and his or her designee, in lawful possession of autopsy media records may use autopsy media records for educational purposes as long as:

(i) Personal information identifying the decedent, including name, address, social security number, case and/or medical record number and any other uniquely identifying features, is redacted and expunged from the autopsy records; and

(ii) Facial identity of the deceased is rendered as anonymous as reasonably possible.

For the purposes of this paragraph, "educational purposes" include, but are not limited to, medical or scientific teaching or training purposes, teaching or training law enforcement personnel, teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science, conferring with medical or scientific experts in the field of forensic science, publication in a scientific or medical journal or textbook.

(5)(a) A court, upon a showing of good cause, may:

(i) Issue an order authorizing any person to view, listen to, and/or copy an autopsy media record; and

(ii) May prescribe any restrictions or stipulations that the court deems appropriate.

(b) In determining good cause, a court shall consider whether such disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form.

(c) A surviving relative shall be given:

(i) Reasonable notice of a petition filed with a court to view, listen to, and/or copy an autopsy media record;

(ii) A copy of such petition; and

(iii) Reasonable notice of the opportunity to be present and heard at any hearing on the matter.

(d) Any person who willfully and knowingly violates a court order issued pursuant to this section commits a felony punishable upon conviction by one-year imprisonment in the State Penitentiary or a fine of Ten Thousand Dollars ($10,000.00), or both.

(6) Any custodian of an autopsy media record who willfully and knowingly violates this section commits a felony punishable upon conviction by one-year imprisonment in the State Penitentiary or a fine of Ten Thousand Dollars ($10,000.00), or both.

(7) Nothing in this section shall:

(a) Prevent the disclosure of confidential victim communications by any governmental or private participant of a meeting of a multidisciplinary child protection team created under Section 43-15-51.

(b) Prevent an advocate from a governmental organization from sharing victim information with necessary persons to accomplish the duties of the job or to satisfy statutory or constitutional requirements of disclosure.

(8) This section shall not be construed as creating a cause of action for damages against the state or any of its agencies, officials, employees or political subdivisions.

HISTORY: Laws, 2021, ch. 397, § 1, eff from and after July 1, 2021.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-61-67. Disinterment; costs; petition for order of exhumation.

OPINIONS OF THE ATTORNEY GENERAL

State Medical Examiner may authorize exhumation of body without court order in cases of suspected homicide for purpose of autopsy but where district attorney has petitioned circuit court for order allowing body to be disinterred and circuit judge has denied that petition in written order, authority of State Medical Examiner in matter would cease. Walker, June 16, 1993, A.G. Op. #93-0361.

§ 41-61-69. Disposition of body without permission of medical examiner; penalties; disposal of body at sea.

OPINIONS OF THE ATTORNEY GENERAL

The statute only applies if a body has been embalmed, buried, or cremated without the permission of the county medical examiner and the death is one under his jurisdiction. Peeler, Jan. 28, 2000, A.G. Op. #2000-0002.

§ 41-61-75. Fees; expert witness; expenses; SIDS/Child Death Scene Investigation reports.

(1) For each investigation with the preparation and submission of the

required reports, the following fees shall be billed to and paid by the county for which the service is provided:

(a) A medical examiner or his deputy shall receive One Hundred Seventy-five Dollars ($175.00) for each completed report of investigation of death, plus the examiner's actual expenses. In addition to that fee, in cases where the cause of death was sudden infant death syndrome (SIDS) and the medical examiner provides a SIDS Death Scene Investigation report, the medical examiner shall receive for completing that report an additional Fifty Dollars ($50.00), or an additional One Hundred Dollars ($100.00) if the medical examiner has received advanced training in child death investigations and presents to the county a certificate of completion of that advanced training. The State Medical Examiner shall develop and prescribe a uniform format and list of matters to be contained in SIDS/Child Death Scene Investigation reports, which shall be used by all county medical examiners and county medical examiner investigators in the state.

(b) The pathologist performing autopsies as provided in Section 41-61-65 shall receive One Thousand Dollars ($1,000.00) per completed autopsy, plus mileage expenses to and from the site of the autopsy, and shall be reimbursed for any out-of-pocket expenses for third-party testing, not to exceed One Hundred Dollars ($100.00) per autopsy.

(2) Any medical examiner, physician or pathologist who is subpoenaed for appearance and testimony before a grand jury, courtroom trial or deposition shall be entitled to an expert witness hourly fee to be set by the court and mileage expenses to and from the site of the testimony, and such amount shall be paid by the jurisdiction or party issuing the subpoena.

HISTORY: Laws, 1986, ch. 459, § 18; Laws, 1990, ch. 453, § 5; Laws, 1991, ch. 591, § 2; Laws, 1993, ch. 411, § 3; Laws, 1998, ch. 567, § 2; Laws, 2007, ch. 367, § 1; Laws, 2008, ch. 362, § 1; reenacted and amended, Laws, 2011, ch. 497, § 1; Laws, 2014, ch. 440, § 1; Laws, 2017, ch. 313, § 1, eff from and after July 1, 2017; Laws, 2019, ch. 485, § 10, eff from and after January 1, 2020; Laws, 2021, ch. 395, § 1, eff from and after July 1, 2021; Laws, 2021, ch. 403, § 11, eff from and after July 1, 2021.

Joint Legislative Committee Note — Section 1 of Chapter 395, Laws of 2021, effective from and after July 1, 2021 (approved March 24, 2021), amended this section. Section 11 of Chapter 403, Laws of 2021, effective from and after July 1, 2021 (approved March 25, 2021), also amended this section. As set out above, this section reflects the language of Section 11 of Chapter 403, Laws of 2021, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act [approved April 18, 2019]."

Amendment Notes — The 2019 amendment, effective January 1, 2020, substituted "One Hundred Seventy-five Dollars ($175.00)" for "One Hundred Twenty-five Dollars ($125.00)" in (1)(a); and extended the date of the repealer for the section by substituting

"July 1, 2021" for "July 1, 2020" in (3).

The first 2021 amendment (ch. 395) extended the date of the repeal of the section by substituting "July 1, 2025" for "July 1, 2021" in (3).

The second 2021 amendment (ch. 403) deleted former (3), which read: "This section shall stand repealed on July 1, 2021."

OPINIONS OF THE ATTORNEY GENERAL

Section 41-61-75 allows for a medical examiner to receive payment for mileage reasonably incurred as a direct result of an investigation of a death. Meredith, December 6, 1996, A.G. Op. #96-0828.

The payments provided for in subsection (1) are "direct payments for services rendered" by the coroner to the county, and the board of supervisors is authorized to pay the matching employer's contributions out of county general funds. Robinson, Feb, 9, 2001, A.G. Op. #2000-9658.

§ 41-61-77. Central office for Mississippi Forensics Laboratory and State Medical Examiner; use of private facilities for investigating deaths; personnel; pathologists.

(1) The Department of Public Safety shall establish and maintain a central office for the Mississippi Forensics Laboratory and the State Medical Examiner with appropriate facilities and personnel for postmortem medicolegal examinations. District offices, with appropriate facilities and personnel, may also be established and maintained if considered necessary by the department for the proper management of postmortem examinations.

The facilities of the central and district offices and their staff services may be available to the medical examiners and designated pathologists in their investigations.

(2) In order to provide proper facilities for investigating deaths as authorized in Sections 41-61-51 through 41-61-79, the State Medical Examiner may arrange for the use of existing public or private laboratory facilities. The State Medical Examiner may contract with qualified persons to perform or to provide support services for autopsies, studies and investigations not inconsistent with other applicable laws. Such laboratory facilities may be located at the University of Mississippi Medical Center or any other suitable location. The State Medical Examiner may be an affiliate or regular faculty member of the Department of Pathology at the University of Mississippi Medical Center and may serve as a member of the faculty of other institutions of higher learning. He shall be authorized to employ, with the approval of the Commissioner of Public Safety, such additional scientific, technical, administrative and clerical assistants as are necessary for performance of his duties. Such employees in the Office of the State Medical Examiner shall be subject to the rules, regulations and policies of the Mississippi State Personnel Board in their employment.

(3) The State Medical Examiner shall be authorized to employ qualified pathologists as deputy state medical examiners as are necessary to carry out the duties of his office. The deputy state medical examiners shall be licensed to practice medicine and, either board-certified in forensic pathology by the American Board of Pathology or be a physician who is board certified in

anatomic pathology by the American Board of Pathology. The State Medical Examiner may delegate specific duties to competent and qualified medical examiners within the scope of the express authority granted to him by law or regulation. Employees of the Office of the State Medical Examiner shall have the authority to enter any political subdivisions of this state for the purpose of carrying out medical investigations.

HISTORY: Laws, 1986, ch. 459, § 19; Laws, 1989, ch. 455, § 1; Laws, 2010, ch. 436, § 3; Laws, 2011, ch. 499, § 7; Laws, 2015, ch. 452, § 4, eff from and after July 1, 2015; Laws, 2019, ch. 310, § 3, eff from and after passage (approved March 14, 2019); Laws, 2021, ch. 403, § 12, eff from and after July 1, 2021.

Amendment Notes — The 2019 amendment, effective March 14, 2019, substituted "Mississippi State Personnel Board" for "state personnel system" in the last sentence of (2); and rewrote the first two sentences of (3), which read: "The State Medical Examiner shall be authorized to appoint and/or employ qualified pathologists as additional associate and assistant state medical examiners as are necessary to carry out the duties of his office. The associate and assistant state medical examiners shall be licensed to practice medicine in Mississippi and, insofar as practicable, shall be trained in the field of forensic pathology."

The 2021 amendment, in (3), deleted "chief" preceding "state medical examiners" both times it appears, deleted "in Mississippi" following "licensed to practice medicine," and substituted "who is board certified in anatomic pathology" for "who is eligible to sit for the forensic pathology board examination administered."

OPINIONS OF THE ATTORNEY GENERAL

Whenever studies appear to be necessary, State Medical Examiner should be contacted and facilities of State which are available should be utilized to fullest extent possible; if any additional experts outside State Medical Examiner's office are required to do special scientific studies, such experts should be engaged and contracted with, by or under direction of State Medical Examiner; expense of any "extra" work would be in addition to $400.00 paid pursuant to statute. West, April 20, 1990, A.G. Op. #90-0235.

The statute authorizes the State Medical Examiner's Office to allow designated state pathologists to utilize the state morgue facility for postmortem examinations and investigations; although there is no authority for the State Medical Examiner's Office to charge a fee for such use, it may require reimbursement of the costs of using the facility, equipment, and supplies. Howell, April 14, 2000, A.G. Op. #2000-0196.

§ 41-61-79. Radio system; pager/beeper; morgue or morgue facility; photographic equipment; vehicle; costs.

OPINIONS OF THE ATTORNEY GENERAL

Board of supervisors is allowed to compensate individual or establishment for use of their facilities when said facilities are used in conducting of autopsies. Yeager, Oct. 3, 1990, A.G. Op. #90-0704.

CHAPTER 63.

EVALUATION AND REVIEW OF PROFESSIONAL HEALTH SERVICES PROVIDERS

§ 41-63-9. Discoverability and admissibility into evidence of proceedings and records of review committees.

OPINIONS OF THE ATTORNEY GENERAL

The exemption stated in § 41-63-9(2) applies to the State Board of Medical Licensure and, when read in conjunction with § 73-25-28(1), they are entitled to discovery of any records or proceedings brought by a hospital review committee which relate to a matter the board has under investigation. Burnett, Feb. 22, 2002, A.G. Op. 02-0053.

Statutes pertaining to the confidentiality and discoverability of reviews conducted under the statewide trauma system discussed. Thompson, May 2, 2003, A.G. Op. #02-0645.

CHAPTER 67.

MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW

GENERAL PROVISIONS

§ 41-67-3. Duties and responsibilities [Repealed effective July 1, 2023].

OPINIONS OF THE ATTORNEY GENERAL

An aerobic treatment system must be tested and listed according to the rules of the Board of Health and, in addition, must have been tested and listed by a third party certifying program according to the rules and regulations of the Board for testing and listing of manufacturers of such systems and must also be in compliance with the most current revision of the ANSI/NSF standard. Hall, January 30, 1998, A.G. Op. #98-0047.

The Mississippi State Department of Health is the proper party to approve the design, construction, and installation of an on-site waste water disposal system when so requested; thus, a county board of supervisors does not have authority to prohibit professional engineers from designing, constructing, or installing individual on-site wastewater disposal systems, or directly supervising same. Thompson, Jr., Oct. 12, 2001, A.G. Op. #01-0627.

The board of health has the authority to adopt regulations aimed at owners of individual onsite wastewater disposal systems (IOWDS) setting minimum standards concerning the maintenance of the IOWDS, and also to provide for periodic inspections to ensure such compliance, but the board may not require owners to enter maintenance contracts. Amy, Apr. 18, 2006, A.G. Op. 06-0018.

§ 41-67-10. Testing and listing of advanced treatment systems [Repealed effective July 1, 2023].

OPINIONS OF THE ATTORNEY GENERAL

An aerobic treatment system must be tested and listed according to the rules of the Board of Health and, in addition, must have been tested and listed by a third party certifying program according to the rules and regulations of the Board for testing and listing of manufacturers of such systems and must also be in compliance with the most current revision of the ANSI/NSF standard. Hall, January 30, 1998, A.G. Op. #98-0047.

§ 41-67-12. Assessment of fees [Repealed effective July 1, 2023].

HISTORY: Laws, 1996, ch. 516, § 12; reenacted without change, Laws, 2001, ch. 578, § 12; reenacted without change, Laws, 2002, ch. 493, § 12; reenacted without change, Laws, 2003, ch. 525, § 12; reenacted without change, Laws, 2005, ch. 545, § 12; reenacted without change, Laws, 2006, ch. 391, § 11; reenacted without change, Laws, 2008, ch. 563, § 11; reenacted without change, Laws, 2011, ch. 544, § 11; reenacted and amended, Laws, 2013, ch. 513, § 11; Laws, 2016, ch. 510, § 16, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 346, § 11, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 473, § 16, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 16. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

This section was subject to the repealer in Section 65 of Chapter 510, Laws of 2016, effective July 1, 2020. The section is also included within the span of sections repealed by Section 41-67-31, effective July 1, 2023. Section 65, Chapter 510, Laws of 2016, was subsequently repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020. This section remains subject to the repealer in Section 41-67-31.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-67-15. Authority of municipalities and boards of supervisors to adopt more restrictive ordinances not impaired; Department of Health prohibited from approving system that does not comply with more restrictive ordinances [Repealed effective July 1, 2023].

OPINIONS OF THE ATTORNEY GENERAL

A county may adopt an ordinance requiring all property owners to request the Mississippi State Department of Health to approve the design, construction and installation of any system which would require a waste water disposal system pursuant to this chapter. Ross, August 12, 1999, A.G. Op. #99-0407.

The Mississippi State Department of Health is the proper party to approve the design, construction, and installation of an on-site waste water disposal system when so requested; thus, a county may adopt an ordinance requiring all property owners to request the Mississippi State Health Department to approve the design,

construction, or installation of such a system. Thompson, Jr., Oct. 12, 2001, A.G. Op. #01-0627.

§ 41-67-23. Inspection by Department where Department approval requested [Repealed effective July 1, 2023].

OPINIONS OF THE ATTORNEY GENERAL

Based on the requirement set forth in Section 41-67-23 that the Department of Health inspect wastewater systems at the behest of the property owner, or his lender, coupled with the authority to charge and collect reasonable fees for health services as set out in Section 41-3-15(4)(f), the Department of Health may recoup actual costs associated with its obligations imposed in Section 41-67-23. Thompson, April 18, 1995, A.G. Op. #95-0240.

§ 41-67-25. Certification of installers required; exception; renewal; revocation; certified installers listed; penalty for operating without certification [Repealed effective July 1, 2023].

HISTORY: Laws, 1992, ch. 536, § 11; Laws, 1996, ch. 516, § 18; reenacted and amended, Laws, 2001, ch. 578, § 18; reenacted without change, Laws, 2002, ch. 493, § 18; reenacted without change, Laws, 2003, ch. 525, § 18; reenacted without change, Laws, 2005, ch. 545, § 18; reenacted without change, Laws, 2006, ch. 391, § 17; reenacted and amended, Laws, 2008, ch. 563, § 16; reenacted and amended, Laws, 2011, ch. 544, § 16; reenacted and amended, Laws, 2013, ch. 513, § 16; Laws, 2016, ch. 510, § 17, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 346, § 16, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 473, § 17, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 17. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

This section was subject to the repealer in Section 65 of Chapter 510, Laws of 2016, effective July 1, 2020. The section is also included within the span of sections repealed by Section 41-67-31, effective July 1, 2023. Section 65, Chapter 510, Laws of 2016, was subsequently repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020. This section remains subject to the repealer in Section 41-67-31.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-67-28. Violations; penalties and damages [Repealed effective July 1, 2023].

OPINIONS OF THE ATTORNEY GENERAL

Under Sections 41-67-28 and 21-13-1, the Legislature has already placed limits on penalties for violations of municipal ordinances, therefore a municipality may

not pass an ordinance making each day of a continuing violation a separate offense, in the absence of a statute so providing. Mitchell, February 16, 1996, A.G. Op. #96-0028.

§ 41-67-37. Certified professional evaluator; certification requirements; renewal; official list of certified professional evaluators; penalty for operating without certification [Repealed effective July 1, 2023].

HISTORY: Laws, 2008, ch. 563, § 23; reenacted and amended, Laws, 2011, ch. 544, § 22; reenacted and amended, Laws, 2013, ch. 513, § 22; Laws, 2016, ch. 510, § 18, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 346, § 21, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 473, § 18, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 18. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

This section was subject to the repealer in Section 65 of Chapter 510, Laws of 2016, effective July 1, 2020. The section is also included within the span of sections repealed by Section 41-67-31, effective July 1, 2023. Section 65, Chapter 510, Laws of 2016, was subsequently repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020. This section remains subject to the repealer in Section 41-67-31.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-67-39. Certificate required for person operating as pumper removing and disposing of sludge from on-site wastewater disposal systems; certificate requirements; official list of certified pumpers; penalty for operating without license; suspension or revocation of pumper certification; grounds; renewal [Repealed effective July 1, 2023].

HISTORY: Laws, 2008, ch. 563, § 22; reenacted and amended, Laws, 2011, ch. 544, § 23; reenacted and amended, Laws, 2013, ch. 513, § 23; Laws, 2016, ch. 510, § 19, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 346, § 22, eff from and after July 1, 2018; reenacted without change, Laws, 2020, ch. 476, § 19, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 19. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

This section was subject to the repealer in Section 65 of Chapter 510, Laws of 2016, effective July 1, 2020. The section is also included within the span of sections repealed by Section 41-67-31, effective July 1, 2023. Section 65, Chapter 510, Laws of 2016, was subsequently repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020. This section remains subject to the repealer in Section 41-67-31.

Amendment Notes — The 2020 amendment reenacted the section without change.

CHAPTER 71.

HOME HEALTH AGENCIES

§ 41-71-5. Application for license; fee [Repealed effective July 1, 2023].

HISTORY: Laws, 1981, ch. 484, § 3; Laws, 1986, ch. 500, § 24; Laws, 1998, ch. 433, § 2; Laws, 2016, ch. 510, § 20, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 20, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 20. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

This section was subject to the repealer in Section 65 of Chapter 510, Laws of 2016, effective July 1, 2020. The section is also included within the span of sections repealed by Section 41-67-31, effective July 1, 2023. Section 65, Chapter 510, Laws of 2016, was subsequently repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020. This section remains subject to the repealer in Section 41-67-31.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-71-7. Terms and conditions of license; renewal [Repealed effective July 1, 2023].

HISTORY: Laws, 1981, ch. 484, § 4; Laws, 1986, ch. 437, § 22; Laws, 1986, ch. 500, § 25; Laws, 1998, ch. 433, § 3; Laws, 2016, ch. 510, § 21, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 21, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 21. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

This section was subject to the repealer in Section 65 of Chapter 510, Laws of 2016, effective July 1, 2020. The section is also included within the span of sections repealed by Section 41-67-31, effective July 1, 2023. Section 65, Chapter 510, Laws of 2016, was subsequently repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020. This section remains subject to the repealer in Section 41-67-31.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-71-13. Rules, regulations and standards.

OPINIONS OF THE ATTORNEY GENERAL

Title 41, Chapter 71, Section 13 of Mississippi Code of 1972 does not authorize Board of Health to require, as prerequisite to new and to continued licensure, that home health agencies provide reasonable amount of indigent care. Thompson, Jan. 14, 1994, A.G. Op. #93-1026.

CHAPTER 73.

HOSPITAL EQUIPMENT AND FACILITIES AUTHORITY ACT

§ 41-73-5. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

There is no authority for a county to convey title to hospital real property to the board of trustees of a community hospital; however, the county may, by resolution properly adopted, join the board of trustees in the execution of a deed of trust or other lien on the real property. Lazarus, Nov. 3, 2000, A.G. Op. #2000-0613.

§ 41-73-7. Mississippi Hospital Equipment and Facilities Authority created; membership; appointment; qualifications.

OPINIONS OF THE ATTORNEY GENERAL

State Health Department cannot legally offer for sale or lease licenses which have been issued to home health agencies. Cobb, Sept. 8, 1992, A.G. Op. #92-0600.

§ 41-73-47. Community hospitals may contract with authority for financing or refinancing of hospital equipment or facilities; payments as operating expenses; priority; security interests in hospital facilities and equipment; maximum principal amount and time for payment.

OPINIONS OF THE ATTORNEY GENERAL

A board of trustees of a community hospital may participate in the same bond sale with the board of supervisors that owns the community hospital real property for the purpose of pledging the real property as collateral therefor. Hurt, May 14, 1999, A.G. Op. #99-0218.

The authority to execute deeds of trust on community hospital property applies to the county, as well as the board of trustees of the community hospital, as they are authorized to hold real estate "acting jointly or severally." Lazarus, Nov. 3, 2000, A.G. Op. #2000-0613.

CHAPTER 75.

AMBULATORY SURGICAL FACILITIES

Sec.
41-75-5. License required.

§ 41-75-5. License required.

No person as defined in Section 41-7-173, acting severally or jointly with

any other person, shall establish, conduct, operate or maintain an ambulatory surgical facility or an abortion facility or a freestanding emergency room or a post-acute residential brain injury rehabilitation facility in this state without a license under this chapter.

HISTORY: Laws, 1983, ch. 433, § 3; Laws, 1991, ch. 301, § 3; Laws, 2016, ch. 309, § 3; Laws, 2017, ch. 327, § 3, eff from and after July 1, 2017; Laws, 2021, ch. 474, § 3, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment deleted the former second paragraph, which related to restrictions on post-acute residential brain injury rehabilitation facilities participation in the Medicaid program.

§ 41-75-7. Application for license; fee.

HISTORY: Laws, 1983, ch. 433, § 4; Laws, 1986, ch. 500, § 26; Laws, 1998, ch. 433, § 4; Laws, 2016, ch. 510, § 22, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 22, eff from and after July 1, 2020.

Editor's Notes — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

This section was reenacted without change by Laws of 2020, ch. 473, § 22. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-75-9. Issuance of license; renewal and fee; transferability; posting.

HISTORY: Laws, 1983, ch. 433 § 5; Laws, 1986, ch. 500, § 27; Laws, 1998, ch. 433, § 5; Laws, 2016, ch. 510, § 23, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 23, eff from and after July 1, 2020.

Editor's Notes — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

This section was reenacted without change by Laws of 2020, ch. 473, § 23. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

CHAPTER 77.

LICENSING OF BIRTHING CENTERS

§ 41-77-9. Application for license; fee.

HISTORY: Laws, 1985, ch. 503, § 5; Laws, 1986, ch. 500, § 28; Laws, 1998, ch. 433, § 6; Laws, 2016, ch. 510, § 24, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 24, eff from and after July 1, 2020.

Editor's Notes — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by

Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

This section was reenacted without change by Laws of 2020, ch. 473, § 24. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-77-25. Issuance, renewal, and posting of licenses.

HISTORY: Laws, 1985, ch. 503, § 13; Laws, 1986, ch. 500, § 29; Laws, 2016, ch. 510, § 25, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 25, eff from and after July 1, 2020.

Editor's Notes — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

This section was reenacted without change by Laws of 2020, ch. 473, § 25. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

CHAPTER 83.

UTILIZATION REVIEW OF AVAILABILITY OF HOSPITAL RESOURCES AND MEDICAL SERVICES

§ 41-83-31. Adverse determination to patient or health-care provider; discussion of reasons; denial of third party reimbursement or precertification; evaluation by trained specialist.

OPINIONS OF THE ATTORNEY GENERAL

The board of medical licensure may adopt regulations which set professional standards for physicians performing utilization review activities and provide for disciplinary action for physicians found to be in violation thereof. Morgan, Aug. 18, 2006, A.G. Op. 06-0324.

CHAPTER 85.

MISSISSIPPI HOSPICE LAW OF 1995

§ 41-85-7. Administration of chapter; powers and duties of administrator; collection and use of fees; suspension of processing or issuing certain new applications for hospice licensure [Subsection (3) repealed effective July 1, 2027].

(1) The administration of this chapter is vested in the Mississippi Department of Health, which shall:

(a) Prepare and furnish all forms necessary under the provisions of this chapter in relation to applications for licensure or renewals thereof;

(b) Collect in advance at the time of filing an application for a license or at the time of renewal of a license a fee of One Thousand Dollars ($1,000.00) for each site or location of the licensee; any increase in the fee charged by the department under this paragraph shall be in accordance with the provisions of Section 41-3-65;

(c) Levy a fee of Eighteen Dollars ($18.00) per bed for the review of inpatient hospice care; any increase in the fee charged by the department under this paragraph shall be in accordance with the provisions of Section 41-3-65;

(d) Conduct annual licensure inspections of all licensees which may be the same inspection as the annual Medicare certification inspection; and

(e) Promulgate applicable rules and standards in furtherance of the purpose of this chapter and may amend such rules as may be necessary. The rules shall include, but not be limited to, the following:

(i) The qualifications of professional and ancillary personnel in order to adequately furnish hospice care;

(ii) Standards for the organization and quality of patient care;

(iii) Procedures for maintaining records; and

(iv) Provision for the inpatient component of hospice care and for other professional and ancillary hospice services.

(2) All fees collected by the department under this section shall be used by the department exclusively for the purposes of licensure, regulation, inspection, investigations and discipline of hospices under this chapter.

(3) The State Department of Health shall not process any new applications for hospice licensure or issue any new hospice licenses, except renewals, except as follows:

(a) The department shall process applications for new hospice licenses filed during the period from and including March 27, 2017, through and until July 1, 2017, and shall issue no more than five (5) new hospice licenses in accordance with this chapter so long as the related applicant can show good cause for the issuance of the hospice license(s) for which application is made (including specifically, without limitation, the capability and capacity to provide unique or otherwise unavailable services related to serving patients under eighteen (18) years of age in the service area to which such application relates). If the applicant at the time of filing holds one or more hospice licenses, the applicant must be in good standing with the department regarding those licenses. Not more than two (2) of the new hospice licenses issued under this paragraph (a) shall be issued to the same applicant.

(b) The department shall process applications for new pediatric palliative care hospice licenses filed during the period from and including the effective date of this section through and until July 1, 2021, and shall issue no more than two (2) new pediatric palliative care hospice licenses in accordance with this chapter so long as the applicant can show good cause for the issuance of the hospice license for which application is made. If the

applicant at the time of filing holds one or more hospice licenses, the applicant must be in good standing with the department regarding those licenses. At least one (1) of the new hospice licenses issued under this paragraph (b) shall be issued to an applicant that is located within the Second United States Congressional District as it exists on January 1, 2021. Not more than one (1) of the new hospice licenses issued under this paragraph (b) shall be issued to the same applicant.

This subsection (3) shall stand repealed on July 1, 2027.

(4) The provisions of subsection (3) prohibiting the processing of any new applications for hospice licensure shall not be applicable to an application for license reinstatement by a hospice whose license was temporarily suspended as a result of a federal audit by the U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG), and the audit has been concluded without any penalty imposed by the federal agency.

HISTORY: Laws, 1995, ch. 325, § 4; Laws, 1998, ch. 433, § 7; Laws, 2007, ch. 469, § 1; Laws, 2008, ch. 498, § 1; Laws, 2008, ch. 518, § 1; Laws, 2011, ch. 444, § 1; Laws, 2013, ch. 553, § 1; Laws, 2015, ch. 426, § 1; Laws, 2016, ch. 510, § 26; Laws, 2017, ch. 396, § 1, eff from and after passage (approved Mar. 27, 2017); reenacted without change, Laws, 2020, ch. 473, § 26, eff from and after July 1, 2020; Laws, 2021, ch. 386, § 3, eff from and after passage (approved March 22, 2021).

Editor's Notes — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

The 2021 amendment, effective March 22, 2021, in (3), divided the former first sentence into the introductory paragraph and the first sentence in (a) by substituting "except renewals, except as follows: (a) The department" for "except renewals; however, the department," in (a), substituted "this paragraph (a)" for "this subsection," added (b), and made the former last sentence of (3) the present last paragraph of (3), and therein substituted "July 1, 2027" for "July 1, 2022."

CHAPTER 86.

MISSISSIPPI CHILDREN'S HEALTH CARE INSURANCE PROGRAM ACT

§ 41-86-9. Transfer of health insurance program from State and School Employees Health Insurance Management Board to the Division of Medicaid.

OPINIONS OF THE ATTORNEY GENERAL

The Dental Care Benefits Law (Section 83-51-1 et seq.) is inapplicable to the Children's Health Insurance Program (CHIP), which is not under the jurisdiction of the Department of Insurance, but was, pursuant to Section 41-86-9, developed by the Children's Health Insurance Program Commission; thus, the School Employees Health Insurance Management Board (HIMB) is not prohibited from requiring

that dentists meet certain minimum requirements in order to receive reimbursement for services rendered to children under CHIP, nor is HIMB prohibited from requiring that dentists participate in a provider network in order to receive reimbursement for services rendered to children under CHIP. Anderson and Dale, Dec. 6, 2002, A.G. Op. #02-0433.

CHAPTER 89.

INFANT MORTALITY REDUCTION

INFANT MORTALITY REDUCTION COLLABORATIVE

Sec.
41-89-21. Repealed.

§ 41-89-21. Repealed.

Repealed by its own terms, effective July 1, 2020.

§ 41-89-21. [Laws, 2015, ch. 492, § 1; Laws, 2017, ch. 323, § 1, eff from and after July 1, 2017.]

Editor's Note — Former § 41-89-21 related to the creation, membership, and policy recommendations of the Infant Mortality Reduction Collaborative.

CHAPTER 99.

QUALIFIED HEALTH CENTER GRANT PROGRAM

Sec.
41-99-1. Definitions.
41-99-3. Establishment of Qualified Health Center Grant Program; purpose; administration by Department of Health.
41-99-5. Requirements for participation in program; restrictions on use of grants; advisory council.
41-99-7. Creation of fund for disbursements of grants.

§ 41-99-1. Definitions.

For purposes of this chapter:

(a) "Mississippi qualified health center" means a public or nonprofit entity that provides comprehensive primary care services that:

(i) Has a community board of directors, the majority of whom are users of such centers;

(ii) Accepts all patients that present themselves despite their ability to pay and uses a sliding-fee-schedule for payments; and

(iii) Serves a designated medically underserved area or population, as provided in Section 330 of the Public Health Service Act.

(b) "Uninsured or medically indigent patient" means a patient receiving services from a Mississippi qualified health center who is not eligible for

Medicaid, Medicare or any other type of governmental reimbursement for health care costs or receiving third-party payments via an employer.

(c) "Department" means the State Department of Health.

(d) "Primary care" means the basic entry level of health care provided by health care practitioners or nonphysician health care practitioners, which is generally provided in an outpatient setting.

(e) "Medically underserved area or population" means an area designated by the Secretary of the United States Department of Health and Human Services as an area with a shortage of professionals, health services or a population group designated by the secretary as having a shortage of those services.

(f) "Service grant" means either a care grant or a physician grant, or both, by the department to a Mississippi qualified health center in accordance with this chapter.

(g) "Program" means the Mississippi Qualified Health Center Grant Program established in this chapter.

(h) "Primary care physician" means a doctor of medicine or doctor of osteopathy who:

(i) Is a resident of Mississippi;

(ii) Is licensed to practice medicine under Section 73-25-1 et seq.; and

(iii) Practices in Family Medicine, Obstetrics and Gynecology, Pediatrics, Internal Medical-Pediatrics or General Internal Medicine.

(i) "Care grant" means a service grant awarded under the program in Section 41-99-5(2) to a Mississippi qualified health center for its use in providing care to uninsured or medically indigent patients in Mississippi.

(j) "Physician grant" means a service grant awarded under the program in Section 41-99-5(3) to a Mississippi qualified health center for its use in providing salary supplements to recruit and retain primary care physicians in areas where there is the most need, as determined by the advisory council, in order to increase health care access to patients in Mississippi.

HISTORY: Laws, 1999, ch. 477, § 3; Laws, 2004, ch. 415, § 1, eff from and after July 1, 2004; Laws, 2020, ch. 416, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (f), inserted "either," "care," and "or a physician grant, or both"; and added (h) through (j).

§ 41-99-3. Establishment of Qualified Health Center Grant Program; purpose; administration by Department of Health.

(1) The Mississippi Qualified Health Center Grant Program is established, under the direction and administration of the State Department of Health, for the purpose of making service grants to Mississippi qualified health centers for their use in:

(a) Providing care to uninsured or medically indigent patients in Mississippi; or

(b) Providing salary supplements to recruit and retain new primary care physicians in areas where there is the most need, as determined by the advisory council, in order to increase health care access to patients in Mississippi.

(2) The program shall be established with such state funds as may be appropriated by the Legislature.

HISTORY: Laws, 1999, ch. 477, § 4; Laws, 2004, ch. 415, § 2, eff from and after July 1, 2004; Laws, 2020, ch. 416, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment divided the former first sentence of the section into two sentences by inserting the colon following "in" and designated the sentences (1) and (a); added (1)(b); and designated the former last sentence of the section as (2) and therein deleted "Mississippi Qualified Health Center Grant" following "The."

§ 41-99-5. Requirements for participation in program; restrictions on use of grants; advisory council.

(1) Any Mississippi qualified health center desiring to participate in the program shall make application for a service grant to the department in a form satisfactory to the department. The department shall receive service grant proposals from Mississippi qualified health centers. All proposals shall be submitted in accordance with the provisions of grant procedures, criteria and standards developed and made public by the department.

(2) The department shall use the funds provided by subsection (6)(a) of this section to make care grants until July 1, 2024, to Mississippi qualified health centers upon proposals made under subsection (1) of this section. Care grants that are awarded to Mississippi qualified health centers shall only be used by those centers to:

(a) Increase access to preventative and primary care services by uninsured or medically indigent patients that are served by those centers; and

(b) Create new services or augment existing services provided to uninsured or medically indigent patients, including, but not limited to, primary care medical and preventive services, dental services, optometric services, in-house laboratory services, diagnostic services, pharmacy services, nutritional services and social services.

(3) The department shall use the funds provided by subsection (6)(b) of this section to make physician grants until July 1, 2022, to Mississippi qualified health centers upon proposals made under subsection (1) of this section. A physician grant awarded to a Mississippi qualified health center shall only be used by that center to provide a one-time salary supplement to a primary care physician being recruited under the program.

(4) Service grants received by Mississippi qualified health centers under this chapter shall not be used:

(a) To supplant federal funds traditionally received by those centers, but shall be used to supplement them;

(b) For land or real estate investments;

(c) To finance or satisfy any existing debt; or

(d) Unless the health center specifically complies with the definition of a Mississippi qualified health center contained in Section 41-99-1.

(5) The department shall develop regulations, procedures and application forms to govern how service grants will be awarded, shall develop a plan to ensure that care grants are equitably distributed among all Mississippi qualified health centers and that physician grants are distributed to the Mississippi qualified health centers where there is the most need, and shall develop an audit process to assure that grant monies are used to provide and expend care to the uninsured and medically indigent.

(6) The department shall establish a fund for the purpose of providing service grants to Mississippi qualified health centers in accordance with this chapter and the following terms and conditions:

(a) The total amount of care grants issued under this chapter shall be Four Million Dollars ($4,000,000.00) per state fiscal year, awarded as follows:

(i) No Mississippi qualified health center shall receive care grants under this program in excess of Two Hundred Thousand Dollars ($200,000.00) per calendar year; and

(ii) Each Mississippi qualified health center receiving a care grant shall provide an annual report to the department that details the number of additional uninsured and medically indigent patients that are cared for and the types of services that are provided;

(b) The total amount of physician grants issued under this chapter during any fiscal year shall not be more than the amount appropriated to the department for that purpose, awarded as follows:

(i) Per fiscal year, a Mississippi qualified health center shall receive only one (1) physician grant under the program, which shall not exceed the amount specified in the appropriation bill for the department;

(ii) For the Mississippi qualified health center to be eligible for a physician grant, a primary care physician shall agree to work, full time, for the Mississippi qualified health center for at least three (3) consecutive years from the date of an executed employment contract;

(iii) A Mississippi qualified health center shall use a physician grant to supplement a physician's salary within the first one hundred twenty (120) days of employment;

(iv) If a physician grant is disbursed to a Mississippi qualified health center and the hiring of the primary care physician does not materialize, the Mississippi qualified health center shall repay the entire physician grant award to the department;

(v) If a primary care physician abandons his or her employment at the Mississippi qualified health center before he or she has worked there for three (3) years, the primary care physician shall repay to the department a pro rata share of the physician grant based on the number of unserved months during the three-year period. Under this subparagraph (v), the department shall have a cause of action against the primary care physician to recover grant monies; and

(vi) Each Mississippi qualified health center receiving a physician care grant shall provide an annual report to the department that details the following:

1. The number of patients treated by the new primary care physician; and

2. The general types of medical services rendered by the new primary care physician; and

(c) On or before January 15 of each year, the department shall provide the reports required by this subsection to the Chair and Vice Chair of the Senate Public Health and Welfare Committee, to the Chair and Vice Chair of the House Public Health and Human Services Committee, to the Lieutenant Governor and to the Speaker of the House.

(7) The department shall establish an advisory council to review and make recommendations to the department on the awarding of any grants to Mississippi qualified health centers. Those recommendations by the advisory council shall not be binding upon the department, but when a recommendation by the advisory council is not followed by the department, the department shall place in its minutes reasons for not accepting the advisory council's recommendation, and provide for an appeals process. All approved service grants shall be awarded within thirty (30) days of approval by the department.

(8) The composition of the advisory council shall be the following:

(a) Two (2) employees of the department, one (1) of whom must have experience in reviewing and writing grant proposals;

(b) Two (2) executive employees of Mississippi qualified health centers, one (1) of whom must be a chief financial officer;

(c) Two (2) health care providers who are affiliated with a Mississippi qualified health center, one (1) of whom must be a physician; and

(d) One (1) health care provider who is not affiliated with a Mississippi qualified health center or the department but has training and experience in primary care.

(9) The department may use a portion of any grant monies received under this chapter to administer the program and to pay reasonable expenses incurred by the advisory council; however, in no case shall more than one and one-half percent (1-1/2%) or Sixty Thousand Dollars ($60,000.00) annually, whichever is greater, be used for program expenses.

(10) No assistance shall be provided to a Mississippi qualified health center under this chapter unless the Mississippi qualified health center certifies to the department that it will not discriminate against any employee or against any applicant for employment because of race, religion, color, national origin, sex or age.

HISTORY: Laws, 1999, ch. 477, § 5; Laws, 2004, ch. 415, § 3; Laws, 2009, ch. 533, § 1; Laws, 2014, ch. 303, § 1, eff from and after July 1, 2014; Laws, 2019, ch. 353, § 1, eff from and after July 1, 2019; Laws, 2020, ch. 416, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2019 amendment substituted "July 1, 2024" for "July 1,

2019" in (2).

The 2020 amendment substituted "service grant" and "service grants" for "grant" and "grants" everywhere they appear; in (2), substituted "subsection (6)(a) of this section" for "this chapter," and inserted "care" and "Care"; added (3); redesignated former (3) through (9) as (4) through (10); in (5), substituted "care grants" for "service grants," and inserted "and that physician grants...where there is the most need"; in (6), in (a), inserted "care" and added "awarded as follows," redesignated former (6)(b) as (6)(a)(i), and therein substituted "care grants" for "assistance" and added "and" at the end, redesignated former (6)(c) as (6)(a)(ii), and therein substituted "care grant" for "service grant" and "an annual report" for "a yearly report," and added (b) and (c); and in (8)(c), inserted "one (1) of whom must be a physician."

§ 41-99-7. Creation of fund for disbursements of grants.

There is created a special fund in the State Treasury to be known as the Mississippi Qualified Health Center Grant Program Fund, from which service grants and expenditures authorized in connection with the program shall be disbursed. All monies received by legislative appropriation to carry out the purposes of this chapter shall be deposited into the Mississippi Qualified Health Center Grant Program Fund.

HISTORY: Laws, 1999, ch. 477, § 6; Laws, 2004, ch. 415, § 4, eff from and after July 1, 2004; Laws, 2020, ch. 416, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment inserted "service" in the first sentence.

CHAPTER 101.

MISSISSIPPI COUNCIL ON OBESITY PREVENTION AND MANAGEMENT

§ 41-101-1. Creation; acceptance and expenditure of grants and donations; powers, functions, and duties; composition; meetings; compensation; report and plan for implementation of services and programs; inter-departmental cooperation.

OPINIONS OF THE ATTORNEY GENERAL

Section 41-101-1(3)(i) should be read as permitting representatives from both those entities to sit as members of the Council. Dawkins, May 16, 2003, A.G. Op. 03-0227.

There is no authority for the Council to apply for 501(c)(3) tax exempt status. Dawkins, May 16, 2003, A.G. Op. 03-0227.

The Council may file reports to the Governor and to the House and Senate Health and Welfare Committees in years subsequent to the 2004 Legislative Session. Dawkins, May 16, 2003, A.G. Op. 03-0227.

CHAPTER 111.

CHILD DEATH REVIEW PANEL

§ 41-111-1. Child death review panel created; purpose; panel membership; annual report; contents of report.

(1) There is created the Child Death Review Panel, whose primary purpose is to foster the reduction of infant and child mortality and morbidity in Mississippi and to improve the health status of infants and children.

(2) The Child Death Review Panel shall be composed of seventeen (17) voting members: the State Medical Examiner or his representative, a pathologist on staff at the University of Mississippi Medical Center, an appointee of the Lieutenant Governor, an appointee of the Speaker of the House of Representatives, and one (1) representative from each of the following: the State Coroners Association, the Mississippi Chapter of the American Academy of Pediatrics, the Office of Vital Statistics in the State Department of Health, the Attorney General's office, the State Sheriff's Association, the Mississippi Police Chiefs Association, the Department of Child Protection Services, the Children's Advocacy Center, the State Chapter of the March of Dimes, the State SIDS Alliance, the Mississippi Children's Safe Center, Safe Kids Mississippi, and the Mississippi State Fire Marshal's office.

(3) The Chairman of the Child Death Review Panel shall be elected annually by the Review Panel membership. The Review Panel shall develop and implement such procedures and policies necessary for its operation, including obtaining and protecting confidential records from the agencies and officials specified in subsection (4) of this section. The Review Panel shall be assigned to the State Department of Health for administrative purposes only, and the department shall designate staff to assist the Review Panel.

(4)(a) The Child Death Review Panel shall submit a report annually to the Chairmen of the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee on or before December 1. The report shall include the numbers, causes and relevant demographic information on child and infant fatalities and near fatalities in Mississippi, and appropriate recommendations to the Legislature on how to most effectively direct state resources to decrease infant and child deaths in Mississippi. Data for the Review Panel's review and reporting shall be provided to the Review Panel, upon the request of the Review Panel, by the State Medical Examiner's office, State Department of Health, Department of Human Services, Department of Child Protection Services, medical exam-

iners, coroners, health care providers, law enforcement agencies, and any other agencies or officials having information that is necessary for the Review Panel to carry out its duties under this section. The State Department of Health shall also be responsible for printing and distributing the annual report(s) on child and infant deaths in Mississippi.

(b) The Children's Safe Center may access and analyze data from the Mississippi Health Information Network to identify data concerning child fatalities and near fatalities necessary for the Review Panel's reporting.

HISTORY: Laws, 2006, ch. 556, § 1; Laws, 2007, ch. 373, § 1; Laws, 2008, ch. 304, § 1; Laws, 2010, ch. 310, § 1; Laws, 2010, ch. 498, § 2; Laws, 2013, ch. 482, § 1; Laws, 2015, ch. 465, § 2, eff from and after July 1, 2015; Laws, 2018, ch. 337, § 1, eff from and after July 1, 2018; Laws, 2019, ch. 464, § 10, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "Department of Child Protection Services" for "Department of Human Services" in (2); in (4)(a), substituted "child and infant fatalities and near fatalities" for "child and infant deaths" and inserted "Department of Child Protections Services"; added (4)(b); and deleted (5), which read: "This section shall stand repealed on July 1, 2021."

OPINIONS OF THE ATTORNEY GENERAL

The Child Death Review Panel has access to any relevant confidential records maintained by the state medical examiner and any relevant public or non-confidential records. Christ, July 28, 2006, A.G. Op. 06-0316.

§ 41-111-3. Mandatory reporting of child fatality or near fatality; mandatory reporters; reporting procedure and contents; confidentiality of reports; reporter immunity; penalties.

(1) **Mandatory reporters:** All law enforcement officers, firefighters, child protection service employees, medical care personnel, doctors, nurses, medical examiners, coroners, health care providers, and all agents and employees of the State Medical Examiner's office, and any other persons who are designated as mandatory reporters under Section 43-21-353(1) who have knowledge or information concerning a "child fatality" or child "near fatality" must make a report to the State Child Abuse Hotline.

(2) **Definitions.** (a) "Child fatality" or "child death" means the sudden and unexpected, or otherwise unexplained death of a child who is between the ages of birth and eighteen (18) years.

(b) "Child near fatality" or "child near death" incident includes all occurrences where a child's physical condition is medically diagnosed as "serious" or "critical" if there is some indication or suggestion that the child's injuries may have been caused by abuse, neglect, or an unexplained cause.

(3) **Mandatory reporting requirement.** A mandatory reporter must make a report if it would be reasonable for the mandatory reporter to suspect that a child death or child near fatality was caused by abuse, neglect, or

occurred unexpectedly due to an unexplained cause. Reports to the Child Abuse Hotline must be made in all circumstances involving child fatalities and near fatalities, including, but not limited to, situations where:

(a) Abuse or neglect is the suspected cause of a child's sudden or unexpected death;

(b) There is a medical diagnosis of "sudden unexplained infant death" (SUID);

(c) The cause of death of any child is unexplained;

(d) The child is the victim of suspected sexual abuse or sexual exploitation, and physical injury has resulted that has been medically diagnosed as "serious" or "critical"; and

(e) Severe abuse or neglect is suspected, or an unexplained cause resulted in severe physical injury or trauma to a child that resulted in a medical diagnosis that the child's condition was "serious" or "critical," or which required hospitalization in an intensive care unit of a hospital.

(4) **Mandatory reporting procedure.** A report required under subsection (2) must be made immediately to the State Child Abuse Hotline. Except as otherwise provided in this subsection, a mandatory reporter may not delegate to any other person the responsibility to report, but must make the report personally.

(5) **Contents of the report.** The report must identify, to the extent known to the reporter, the following:

(a) The name and address of the minor victim;

(b) The name and address of the minor's caretaker;

(c) Any other pertinent information known to the reporter.

(7) **Confidentiality.** Reports made under this section are not public records. Reports made under this section and the identity of the mandatory reporter shall be confidential, except when the court determines the testimony of the person reporting to be material to a judicial proceeding, so that the identity of the reporter is released to law enforcement agencies and the appropriate prosecutor. In those circumstances, the identity of the reporting party shall not be disclosed to anyone other than law enforcement or prosecutors except under court order. Violation of this confidentiality requirement is a misdemeanor punishable by imprisonment not to exceed six (6) months, a fine not to exceed One Thousand Dollars, ($1,000.00), or both. Disclosure of any information by the prosecutor shall conform to the Mississippi Uniform Rules of Circuit and County Court Procedure.

(7) **Immunity.** A mandatory reporter who makes a required report under this section or participates in a judicial proceeding resulting from a mandatory report is presumed to be acting in good faith. A health care practitioner or health care facility is immune from any penalty, civil or criminal, for good-faith compliance with any rules and regulations adopted pursuant to this section. A person or institution reporting in good faith is immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

(8) **Penalties.** Failure to make a mandatory report required under this section will be punished as follows:

(a) A person who is convicted of a first offense of failure to make a report as required under this section is guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars ($500.00).

(b) A person who is convicted of a second offense of failure to make a report as required under this section is guilty of a misdemeanor and shall be fined not more than One Thousand Dollars ($1,000.00), imprisoned for not more than thirty (30) days, or both.

(c) A person who is convicted of a third or subsequent offense of failure to make a report as required under this section is guilty of a misdemeanor and shall be fined not more than Five Thousand Dollars ($5,000.00), imprisoned for not more than one (1) year, or both.

HISTORY: Laws, 2019, ch. 464, § 11, eff from and after July 1, 2019.

Editor's Notes — This section was enacted by § 11 of Chapter 464, Laws of 2019, with two subsections designated (7). The section is set out above as it appears in the act.

CHAPTER 113.

TOBACCO EDUCATION, PREVENTION AND CESSATION PROGRAM

Sec.
41-113-11. Tobacco Control Program Fund created.

§ 41-113-11. Tobacco Control Program Fund created.

(1) There is established in the State Treasury a special fund to be known as the Tobacco Control Program Fund, which shall be comprised of the funds specified in subsection (2) of this section and any other funds that are authorized or required to be deposited into the special fund.

(2) From the tobacco settlement installment payments that the State of Mississippi receives during each calendar year, the sum of Twenty Million Dollars ($20,000,000.00) shall be deposited into the special fund.

(3) Monies in the fund shall be expended solely for the purposes specified in this chapter. None of the funds in the special fund may be transferred to any other fund or appropriated or expended for any other purpose.

(4) All income from the investment of the funds in the Tobacco Control Program Fund shall be credited to the account of the Tobacco Control Program Fund. Any funds in the Tobacco Control Program Fund at the end of a fiscal year shall not lapse into the State General Fund. Any funds appropriated from the Tobacco Control Program Fund that are unexpended at the end of a fiscal year shall lapse into the Tobacco Control Program Fund. However, beginning with fiscal year 2020, any funds appropriated from the Tobacco Control Program Fund that are unexpended at the end of the fiscal year shall lapse into the Health Care Expendable Fund.

HISTORY: Laws, 2007, ch. 514, § 18; Laws, 2015, ch. 471, § 13; Laws, 2017, ch.

440, § 6, eff from and after passage (approved Apr. 18, 2017); Laws, 2020, ch. 478, § 2, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (4), rewrote the former last sentence, which read: "Any funds appropriated from the Tobacco Control Program Fund that are unexpended at the end of a fiscal year shall lapse into the Tobacco Control Program Fund; however, any funds appropriated from the Tobacco Control Program Fund that are unexpended at the end of fiscal year 2017 shall lapse into the Health Care Expendable Fund" and divided it into the present last two sentences.

CHAPTER 119.

HEALTH INFORMATION TECHNOLOGY ACT

§§ 41-119-1 through 41-119-21. Repealed.

Repealed by § 41-119-21 effective on July 1, 2019.

§ 41-119-1. [Laws, 2010, ch. 545, § 1; brought forward without change, Laws, 2014, ch. 466, § 1, eff from and after July 1, 2014.]

§ 41-119-3. [Laws, 2010, ch. 545, § 2; brought forward without change, Laws, 2014, ch. 466, § 2, eff from and after July 1, 2014.]

§ 41-119-5. [Laws, 2010, ch. 545, § 3; brought forward without change, Laws, 2014, ch. 466, § 3, eff from and after July 1, 2014.]

§ 41-119-7. [Laws, 2010, ch. 545, § 4; brought forward and amended, Laws, 2014, ch. 466, § 4, eff from and after July 1, 2014.]

§ 41-119-9. [Laws, 2010, ch. 545, § 5; brought forward without change, Laws, 2014, ch. 466, § 5, eff from and after July 1, 2014.]

§ 41-119-11. [Laws, 2010, ch. 545, § 6; brought forward without change, Laws, 2014, ch. 466, § 6, eff from and after July 1, 2014.]

§ 41-119-13. [Laws, 2010, ch. 545, § 7; brought forward without change, Laws, 2014, ch. 466, § 7, eff from and after July 1, 2014.]

§ 41-119-15. [Laws, 2010, ch. 545, § 8; brought forward without change, Laws, 2014, ch. 466, § 8, eff from and after July 1, 2014.]

§ 41-119-17. [Laws, 2010, ch. 545, § 9; brought forward without change, Laws, 2014, ch. 466, § 9, eff from and after July 1, 2014.]

§ 41-119-19. [Laws, 2010, ch. 545, § 10; Laws, 2014, ch. 466, § 10, eff from and after July 1, 2014.]

§ 41-119-21. [Laws, 2010, ch. 545, § 11; Laws, 2014, ch. 466, § 11, eff from and after July 1, 2014.]

Editor's Notes — Former § 41-119-1 provided for the short title of the chapter.

Former § 41-119-3 provided that Mississippi Health Information Network was to be public private partnership for benefit of citizens of Mississippi.

Former § 41-119-5 provided for creation, board of directors membership and terms, and bylaws of the Mississippi Health Information Network.

Former § 41-119-7 provided for the purposes and duties of MS-HIN, and powers of MS-HIN board and executive director.

Former § 41-119-9 provided for immunity for board members.

Former § 41-119-11 provided for retention of property rights in information, data, or

processes or software developed, designed or purchased.

Former § 41-119-13 provided for confidentiality of health care information and data in network.

Former § 41-119-15 provided definitions.

Former § 41-119-17 required that state agencies provide MS-HIN with certain information before acquiring any health information technology.

Former § 41-119-19 required Legislative Audit Committee to make certain reports regarding development of electronic health information.

Former § 41-119-21 repealed Sections 41-119-1 through 41-119-21.

CHAPTER 121.

REQUIREMENTS FOR ADVERTISEMENTS FOR HEALTH CARE SERVICES

§ 41-121-1. Title [Repealed effective July 1, 2025].

HISTORY: Laws, 2012, ch. 409, § 1; reenacted without change, Laws, 2016, ch. 419, § 1, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 393, § 1, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 393, § 1. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-121-3. Purpose [Repealed effective July 1, 2025].

HISTORY: Laws, 2012, ch. 409, § 2; reenacted without change, Laws, 2016, ch. 419, § 2, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 393, § 2, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 393, § 2. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-121-5. Definitions [Repealed effective July 1, 2025].

For the purposes of this chapter:

(a) "Advertisement" means any communication or statement, whether printed, electronic or oral, that names the health care practitioner in relation to his or her practice, profession, or institution in which the individual is employed, volunteers or otherwise provides health care services. This includes business cards, letterhead, patient brochures, email, Internet, audio and video, and any other communication or statement used in the course of business or any other definition provided by regulations of the licensing board of proper jurisdiction.

(b) "Deceptive" or "misleading" includes, but is not limited to, any advertisement or affirmative communication or representation that misstates, falsely describes, holds out or falsely details the health care practitioner's profession, skills, training, expertise, education, board certification or licensure as determined by each respective licensing board.

(c) "Health care practitioner" means any person who engages in acts that are the subject of licensure or regulation. Categories of health care practitioner include:

(i) Practitioners of allopathic medicine, signified by the letters "M.D." or the words surgeon, medical doctor, or doctor of medicine by a person licensed to practice medicine and surgery.

(ii) Practitioners of osteopathic medicine, signified by the letters "D.O." or the words surgeon, osteopathic surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine.

(iii) Practitioners of nursing, signified by the letters "D.N.P.," "N.P.," "R.N.," "L.P.N.," "C.R.N.A.," or any other commonly used signifier to denote a doctorate of nursing practice, nurse practitioner, registered nurse, licensed practical nurse, or certified registered nurse anesthetist, respectively, as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(iv) Practitioners of podiatry, signified by the letters "D.P.M." or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine.

(v) Practitioners of chiropractic, signified by the letters "D.C." or the words chiropractor, doctor of chiropractic or chiropractic physician.

(vi) Practitioners of dentistry, signified by the letters "D.D.S." or "D.M.D.," as appropriate, or the words dentist, doctor of dental surgery, or doctor of dental medicine, as appropriate.

(vii) Practitioners of optometry, signified by the letters "O.D." or the words optometrist or doctor of optometry.

(viii) Practitioners of pharmacy, signified by the letters "BSc.Pharm" or "Pharm.D." or the words pharmacists or doctor of pharmacy.

(ix) Physician assistants, signified by the letters "P.A." or the words physician assistant.

(x) Medical assistants, signified by the letters "M.A." or the words medical assistant.

(xi) Practitioners of audiology, signified by the letters "Au.D.," "Sc.D." or "Ph.D.," or the words audiologist or doctor of audiology.

(xii) Psychologists, therapists, speech-language pathologists, counselors, or any other health care practitioner not covered under this section, including, but not limited to, those signified by the letters "Ph.D.," "Ed.D.," "P.T.," "M.P.T." or "Psy.D.," or "Sc.D.," as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(d) "Licensee" means a health care practitioner who holds an active license with the licensing board governing his or her practice in this state.

HISTORY: Laws, 2012, ch. 409, § 3; reenacted without change, Laws, 2016, ch. 419, § 3, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 393, § 3, eff from and after July 1, 2020.

Editor's Notes — This section is set out above to correct an error in subsection (c)(i) as it appeared in the 2018 Replacement Volume 11.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-121-7. Requirements [Repealed effective July 1, 2025].

HISTORY: Laws, 2012, ch. 409, § 4; reenacted without change, Laws, 2016, ch. 419, § 4, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 393, § 4, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 393, § 4. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-121-9. Violations and enforcement [Repealed effective July 1, 2025].

HISTORY: Laws, 2012, ch. 409, § 5; reenacted without change, Laws, 2016, ch. 419, § 5, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 393, § 5, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 393, § 5. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment reenacted the section without change.

§ 41-121-11. Repeal of this chapter.

Sections 41-121-1 through 41-121-9 shall stand repealed on July 1, 2025.

HISTORY: Laws, 2012, ch. 409, § 6; Laws, 2016, ch. 419, § 6, eff from and after July 1, 2016; Laws, 2020, ch. 393, § 6, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment extended the date of the repealer for §§ 41-121-1 through 41-121-9 by substituting "July 1, 2025" for "July 1, 2020."

CHAPTER 125.

PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS (PPEC)

§ 41-125-7. Separate licenses required; fee; exemption.

HISTORY: Laws, 2012, ch. 524, § 4; Laws, 2016, ch. 510, § 27, eff from and after July 1, 2016; reeenacted without change, Laws 2020, ch. 473, § 27, eff from and after July 1, 2020.

Editor's Notes — This section was reenacted without change by Laws of 2020, ch. 473, § 27. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

Amendment Notes — The 2020 amendment reenacted the section without change.

CHAPTER 131.

RIGHT TO TRY ACT

Sec.

§ 41-131-1. Right to try act; definitions; availability of investigational drug, biological product, or device; insurance coverage; action against health care provider's license or Medicare certification prohibited; limitation of liability; severability.

(1) This section shall be known and may be cited as the "Right-to-Try Act."

(2) For purposes of this section:

(a) "Eligible patient" means a person who meets all of the following requirements:

(i) Has a debilitating disability, traumatic injury, terminal illness or life-threatening illness that has not responded or cannot be treated with currently approved products;

(ii) Has considered all other treatment options currently approved by the United States Food and Drug Administration and all relevant clinical trials conducted in this state;

(iii) Has received a prescription or recommendation from the person's physician for an adult autologous mesenchymal stem cell, investigational drug, biological product or device;

(iv) Has given written informed consent, which shall be at least as comprehensive as the consent used in clinical trials for the use of the adult

autologous mesenchymal stem cell, investigational drug, biological product or device, or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian has given written informed consent on the patient's behalf; and

(v) Has documentation from the person's physician that the person has met all of the requirements of this subsection.

(b) "Adult autologous mesenchymal stem cell, investigational drug, biological product or device" means an adult autologous mesenchymal stem cell, drug, biological product or device, any of which are used to treat the patient's disability, traumatic injury or illness, and the use of which has been either described in a United States Food and Drug Administration/National Institutes of Health (FDA/NIH) approved-protocol or study, or approved by an institutional review board (IRB), or successfully completed a safety study. The drug, product or device must be produced in a manner consistent with the quality standards of an adult autologous mesenchymal stem cell, investigational drug, biological product or device in the United States (i.e., standards required by an FDA-approved trial) and must show prior evidence of safe usage in humans in the United States or other countries. The adult autologous mesenchymal stem cell, investigational drug, biological product or device must have successfully completed phase one of a clinical trial but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial. The term shall not include Schedule I controlled substances.

(c) "Terminal illness" means a disease that without life-sustaining procedures will result in death in the near future or a state of permanent unconsciousness from which recovery is unlikely.

(d) "Written informed consent" means a written document that is:

(i) Signed by the:

1. Patient;
2. Parent, if the patient is a minor;
3. Legal guardian; or
4. Patient advocate designated by the patient under the Uniform Health-Care Decisions Act, Section 41-41-201 et seq.; and

(ii) Attested to by the patient's physician and a witness and that, at a minimum, includes all of the following:

1. An explanation of the currently approved products and treatments for the disease or condition from which the patient suffers;

2. An attestation that the patient concurs with his or her physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life;

3. Clear identification of the specific proposed adult autologous mesenchymal stem cell, investigational drug, biological product or device that the patient is seeking to use;

4. A description of the potentially best and worst outcomes of using the adult autologous mesenchymal stem cell, investigational drug, biological product or device and a realistic description of the most likely

outcome. The description shall include the possibility that new, unanticipated, different, or worse symptoms might result and that death could be hastened by the proposed treatment. The description shall be based on the physician's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition;

5. A statement that the patient's health plan or third-party administrator and provider are not obligated or required to pay for any cost of any adult autologous mesenchymal stem cell, investigational drug, biological product or device or for any care or treatments consequent to the use of the adult autologous mesenchymal stem cell, investigational drug, biological product or device, unless they are specifically required to do so by law or contract;

6. A statement that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment with the adult autologous mesenchymal stem cell, investigational drug, biological product or device and that care may be reinstated if this treatment ends and the patient meets hospice eligibility requirements; and

7. A statement that the patient understands that he or she is liable for all expenses consequent to the use of the adult autologous mesenchymal stem cell, investigational drug, biological product or device and that this liability extends to the patient's estate, unless a contract between the patient and the manufacturer of the adult autologous mesenchymal stem cell, drug, biological product or device states otherwise. The patient's health plan or third-party administrator are not liable for any outstanding debt related to the treatment or lack of insurance consequent to the use of the adult autologous mesenchymal stem cell, investigational drug, biological product or device.

(3) A manufacturer of an adult autologous mesenchymal stem cell, investigational drug, biological product or device may make available the manufacturer's adult autologous mesenchymal stem cell, investigational drug, biological product or device to eligible patients under this section. This section does not require that a manufacturer make available an adult autologous mesenchymal stem cell, investigational drug, biological product or device to an eligible patient. A manufacturer may:

(a) Provide an adult autologous mesenchymal stem cell, investigational drug, biological product or device to an eligible patient without receiving compensation; or

(b) Require an eligible patient to pay the costs of or associated with the manufacture of the adult autologous mesenchymal stem cell, investigational drug, biological product or device.

(4) This section does not require a health care insurer to provide coverage for the cost of any adult autologous mesenchymal stem cell, investigational drug, biological product or device. However, a health care insurer may provide coverage for an adult autologous mesenchymal stem cell, investigational drug, biological product or device.

(5) This section does not require the Mississippi Department of Corrections or any other governmental agency to provide coverage for the cost of any

adult autologous mesenchymal stem cell investigational drug, biological product or device.

(6) This section does not require a licensed hospital or nursing home to provide new or additional services, unless approved by the hospital or facility.

(7) This section does not require a licensed physician to offer any adult autologous mesenchymal stem cell, investigational drug, biological product or device.

(8) Notwithstanding any other provision of law to the contrary, no state agency or regulatory board shall revoke, fail to renew, or take any other action against a physician's license under Section 73-25-1 et seq., or against a pharmacist's license under Section 73-21-71 et seq., based solely on the physician's or pharmacist's recommendation to an eligible patient regarding prescription for or treatment with an adult autologous mesenchymal stem cell, investigational drug, biological product or device. Action against a health care provider's Medicare certification based solely on the health care provider's recommendation that a patient have access to an adult autologous mesenchymal stem cell, investigational drug, biological product or device is prohibited.

(9) If the clinical trial is closed due to lack of efficacy or toxicity, the drug shall not be offered. If notice is given on an adult autologous mesenchymal stem cell, investigational drug, product or device taken by a patient outside of a clinical trial, the pharmaceutical company or patient's physician shall notify the patient of the information from the safety committee of the clinical trial.

(10) Except in the case of gross negligence or willful misconduct, the patient's health plan, third-party administrator, or any person who manufactures, imports, distributes, prescribes, dispenses, compounds or administers an adult autologous mesenchymal stem cell, investigational drug or device to an eligible patient with a terminal illness in accordance with this section shall not be liable in any action under state law for any loss, damage or injury arising out of, relating to, or resulting from:

(a) The design, development, clinical testing and investigation, manufacturing, labeling, distribution, sale, purchase, donation, dispensing, compounding, prescription, administration, or use of the drug or device; or

(b) The safety or effectiveness of the drug or device.

The immunity provided under this subsection (10) is fully applicable to the owner of a hospital or other licensed health care facility rendering services to an eligible patient where the investigational drug is used or purchased only with regard to the use of the adult autologous mesenchymal stem cell, investigational drug, biological product or device at the facility.

(11) If a provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

HISTORY: Laws, 2015, ch. 423, § 1; Laws, 2016, ch. 415, § 1, eff from and after passage (approved Apr. 13, 2016); Laws, 2020, ch. 384, § 1, eff from and after passage (approved June 25, 2020).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (5) of this section by inserting "adult autologous mesenchymal stem cell" preceding "investigational drug." Section 1 of Chapter 384 inserted "adult autologous mesenchymal stem cell" preceding "investigational drug" everywhere it appears throughout the section, but it was mistakenly omitted from subsection (5). The Joint Committee ratified the correction at its October 19, 2020, meeting.

Amendment Notes — The 2020 amendment, effective June 25, 2020, inserted "adult autologous mesenchymal stem cell" everywhere it appears and made related changes; and inserted "traumatic injury" in (2)(a)(i) and (2)(b).